

RULE CHANGE 2014(15)

**CHAPTER 28
COLORADO RULES OF JUVENILE PROCEDURE**

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Rule 2.2. Summons — Content and Service

(a) Juvenile Delinquency Proceedings.

(1) ~~(a)~~ The summons served in juvenile delinquency proceedings shall contain the notifications required by §19-2-514, C.R.S. The summons and petition shall be served upon the juvenile in the manner provided in §19-2-514, C.R.S. ~~When the person to be served cannot be found after due diligence, service may be by a single publication pursuant to C.R.C.P. 4(g).~~

(2) ~~(b)~~ When the court has acquired jurisdiction over the parties as provided in the Children's Code or pursuant to the Colorado Rules of ~~Juvenile~~Civil Procedure, subsequent pleadings and notice may be served ~~on such parties~~ by regular mail.

(3) If a juvenile is issued a promise to appear pursuant to §19-2-507(5), C.R.S., the promise to appear shall contain the notifications required by §19-2-507(5), C.R.S.

(b) Dependency and Neglect Proceedings.

(1) The summons served in dependency and neglect proceedings shall contain the notifications required by §19-3-503, C.R.S. The summons and petition shall be served upon respondent(s) in the manner provided in §19-3-503(7) and (8), C.R.S.

(2) When the court has acquired jurisdiction over the parties as provided in the Children's Code or pursuant to the Colorado Rules of Juvenile Procedure, subsequent pleadings and notice may be served by regular mail.

(c) Relinquishment Proceedings.

(1) The summons served in relinquishment proceedings shall contain the notifications required by §19-5-105(5), C.R.S.

(2) The summons and petition shall be served upon the non-relinquishing parent as follows:

A. As ordered by the court; or

B. In the same manner as a summons in a civil action; or

C. By mailing it to the respondent ('s/s') last known address, not less than 14 days prior to the time the respondent(s) is/are required to appear, by registered mail return receipt requested or certified mail return receipt requested. Service by mail shall be complete upon return of the receipt signed by the respondent(s) or signed on behalf of the respondent(s) by one authorized by law.

(3) When the person to be served cannot be found after due diligence, service may be by a single publication pursuant to C.R.C.P. 4(g).

(4) When the court has acquired jurisdiction over the parties as provided in the Children's Code or pursuant to the Colorado Rules of Juvenile Procedure, subsequent pleadings and notice may be served by regular mail.

(d) Truancy Proceedings.

(1) The summons served in truancy proceedings shall comply with the provisions of C.R.C.P. 4(c). If the summons is combined with the notice required by §22-33-108(5)(c), C.R.S., it shall also comply with the provisions of that section. In any jurisdiction in which juvenile detention may be used as a sanction after a finding of a violation of a valid court order, the summons shall inform the juvenile served of his or her right to a hearing and to due process as guaranteed by the United States Constitution prior to the entry of a valid court order.

(2) The summons and petition shall be served upon the respondent(s) as required pursuant to C.R.C.P. 4.

(3) When the person to be served cannot be found after due diligence, service may be by a single publication pursuant to C.R.C.P. 4(g).

(4) When the court has acquired jurisdiction over the parties as provided in the Children's Code or pursuant to the Colorado Rules of Civil Procedure, subsequent pleadings and notice may be served by regular mail.

(e) Uniform Parentage Act Proceedings.

(1) The petition and summons served in Uniform Parentage Act proceedings shall comply with all requirements of Title 19, Article 4 of the Colorado Revised Statutes.

(2) The petition and summons, filed by one party, shall be personally served upon all other parties in accordance with §19-4-105.5, C.R.S., or §19-4-109(2), C.R.S., or the Colorado Rules of Civil Procedure.

(3) When the person to be served cannot be found after due diligence, service may be by a single publication pursuant to C.R.C.P. 4(g). Affidavits in support of motions for service by publication shall include a detailed statement of the specific efforts made to locate an absent parent.

(4) The summons issued upon commencement of a proceeding under Article 4 shall include the specified advisements and notice requirements of §19-4-105.5(5), C.R.S.

(5) If the child support enforcement unit is initiating a proceeding under the Uniform Parentage Act, a delegate shall serve the petition and notice of financial responsibility in the manner identified in §26-13.5-104, C.R.S.

(f) Adoption Proceedings.

(1) In adoption proceedings where either parent's parental rights have not been terminated or relinquished, that parent must be personally served with a copy of the petition for adoption.

(2) When the person to be served cannot be found after due diligence, service may be by a single publication pursuant to C.R.C.P. 4(g). Affidavits in support of motions for service by publication shall include a detailed statement of the specific efforts made to locate an absent parent.

(3) If the motion for service through publication is granted, the court shall order service by one publication of the notice in a newspaper of general circulation in the county in which the hearing is to be held. The hearing shall not be held sooner than 35 days after service of the notice is complete.

(4) If the subject child in the adoption proceeding is an enrolled member of a federally recognized American Indian Nation, the petition for adoption must be sent to the parent or Indian custodian of the Indian child and to the Indian child's tribe by registered mail, return receipt requested, pursuant to §19-1-126, C.R.S., and §19-5-208, C.R.S., and proof shall be filed with the court. Postal receipts, or copies thereof, shall be attached to the petition for adoption when it is filed with the court or filed within 10 days after the filing of the petition, as specified in §19-1-126(1)(c), C.R.S.

(5) Service of petition and notice requirements do not apply to validation of a foreign adoption decree proceedings.

(6) A petition for adult adoption shall be filed in accordance with §19-5-208, C.R.S. The petition and summons shall be served on the identified adult adoptee by the petitioner.

(g) Support Proceedings under the Children's Code.

(1) Upon filing of the petition for support, the clerk of court, petitioner, or child support enforcement unit shall issue a summons stating the hearing date and the substance of the petition. A copy of the petition may be attached to the summons in lieu of stating the substance of the petition in the summons.

(2) Service of the summons shall be by personal service pursuant to C.R.C.P. 4(e). If the obligor is a nonresident of this state, the summons and petition may be served by sending the copies by certified mail with proof of actual receipt by the individual.

(3) The hearing to establish support shall occur at least 10 days after service is completed, or any later date the court orders.

(h) Administrative Procedure for Establishing Child Support by the Child Support Enforcement Unit.

(1) The child support enforcement unit shall issue a notice of financial responsibility to an obligor who owes child support.

(2) The child support enforcement unit shall serve the notice of financial responsibility on the obligor not less than 10 days prior to the date stated in the notice for the negotiation conference. Service can be accomplished in accordance with the Colorado Rules of Civil Procedure, by an employee appointed by the child support enforcement unit to serve process, or by certified mail, return receipt requested, signed by the obligor only. The receipt will be prima facie evidence of service.

(3) If process is served through the administrative process, there will be no additional service necessary if the case is referred to court for further review.

PART THREE — DELINQUENCY

Rule 3. Advisement

(a) At the juvenile's first appearance after the detention hearing ~~before the court,~~ or at first appearance on summons, the juvenile and parent, guardian, or other legal custodian shall be fully advised by the court, and the court shall make certain that they understand the following:

(1) No Change

(2) The juvenile's continuing right to counsel and if the juvenile, parent, guardian, or other legal custodian is indigent, that the juvenile may be assigned counsel, as provided by law;

(3) No Change

(4) The juvenile's ~~has the~~ right to a preliminary hearing, as ~~set forth in~~ provided by Section §19-2-705, C.R.S.;

(5) The juvenile's right to a jury trial, as provided by ~~Section §~~ 19-2-107, C.R.S.;

(6) No Change

(7) No Change

(8) The juvenile's right to bail as limited by ~~Sections §~~ 19-2-508, C.R.S., and §19-2-509, C.R.S., and the amount of bail, if any, that has been set by the court; and

(9) That the juvenile may be subject to transfer to the criminal division of the district court to be tried as an adult, as provided by ~~Section §~~19-2-518, C.R.S.; and

(b) (1) - (6) and (c) No Change

Rule 3.7. Detention

(a) Scope. This Rule only applies when a juvenile is taken into custody by a law enforcement officer or a probation officer in connection with a proceeding arising under Article 2 of Title 19 of the Colorado Children's Code or the Interstate Compact for Juveniles.

~~(b)~~ Screening Team. The chief judge in each judicial district or the presiding judge of the Denver juvenile court shall designate one or more qualified a person(s) or agencies to act as a screening team ~~as officer(s) of the court~~ with authority to determine whether a juvenile who has been taken into ~~temporary~~ custody should be released to a parent, guardian, or other legal custodian, or detained ~~admitted to a detention or shelter facility~~ pending ~~notification to the court~~ ~~and~~ a detention hearing.

~~(b) The court shall maintain control over the admission, length of stay, and release of all juveniles placed in shelter or detention, except for admission into detention pursuant to Section 19-2-508(3)(e), C.R.S.~~

(c) Notice. When a juvenile is detained, the screening team shall notify the court, the district attorney, and the local office of the state public defender. The screening team shall also inform the juvenile and the juvenile's parent, guardian, or other legal custodian of the right to a prompt hearing to determine whether the juvenile should be detained further. Notice to the juvenile and the juvenile's parent, guardian, or other legal custodian shall include the date, time, and location of the detention hearing, if known. If the date, time, and location of the detention hearing have not been determined, the screening team will instruct the juvenile's parent, guardian, or other legal custodian to contact the court on the next day which is not a Saturday, Sunday, or legal holiday, during regular business hours, to obtain that information. If a juvenile's parent, guardian, or other legal custodian cannot be located in the county, the screening team will provide notice to the person with whom the juvenile has been residing. Notice as required by this section (c) may be given verbally or in writing. Notice as required by this Rule shall be given as soon as practicable and without unnecessary delay.

(d) Information Sharing. The law enforcement agency that took the juvenile into custody shall promptly provide to the court, the district attorney, and the local office of the state public defender, or other defense counsel if known, the affidavit in support of probable cause for the arrest and the arrest report, if available. The screening team shall promptly provide to the court, the district attorney, the local office of the state public defender, or other defense counsel if known, any screening material prepared pursuant to the juvenile's arrest. The information required to be disclosed by this Rule shall be disseminated as soon as practicable before the detention hearing. If defense counsel does not continue to represent the juvenile after the detention hearing, defense counsel shall return any written materials to the court and destroy any materials received in electronic form immediately.

(e) Time. Upon receipt of the notification required by section (c) of this Rule, the court shall schedule a detention hearing and notify the district attorney, the local office of the state public defender, any defense attorney of record in the case, any guardian ad litem appointed by the court in the case, and the screening team of the date and time of the hearing. The court shall hold a detention hearing within 48 hours after the juvenile was taken into custody unless the juvenile was taken into custody for violating a valid court order on a status offense. The time in which the detention hearing must be held may be extended for a reasonable time by order of the court upon good cause shown. In computing any period of time prescribed by this section (e) Saturdays, Sundays, and legal holidays shall be excluded.

(f) Representation. A juvenile who is detained for committing a delinquent act shall be represented by counsel at a detention hearing as provided in C.R.J.P. 3.9. The court shall allow defense counsel sufficient time to consult with the juvenile before the detention hearing.

(g) Hearing. The purposes of a detention hearing are to determine if a juvenile should be detained further and to define conditions under which he or she may be released, if release is appropriate. Detention hearings shall be conducted in the manner prescribed by §19-2-508, C.R.S.

(h) Court Orders. At the conclusion of a detention hearing, the court shall enter orders prescribed by §19-2-508, C.R.S. The court may also issue temporary orders for legal custody of a juvenile as provided in §19-1-115, C.R.S. The court may further detain a juvenile only if it finds from information provided at the hearing that the juvenile is a danger to himself or herself or to the community.

(i) Court Oversight. The court shall maintain control over the admission, length of stay, and release of all juveniles placed in shelter or detention, subject to the limitations prescribed by §19-2-508(3)(c), C.R.S., and §19-2-509(1), C.R.S.

Rule 3.9. Counsel

(a) Appointment of Counsel.

(1) Detention Hearing. Any juvenile who is detained for committing a delinquent act shall be represented at the detention hearing by counsel. The court shall appoint the office of the state public defender or, in the case of a conflict, the office of alternate defense counsel. Appointment of the office of the state public defender or alternate defense counsel shall continue and counsel shall be available for the juvenile's first appearance.

(2) First Appearance. Unless the juvenile has made an early application for or retained his or her own counsel, or the juvenile has made a knowing, intelligent, and voluntary waiver, at the first appearance the court shall appoint the office of the state public defender or, in the case of a conflict, alternative defense counsel if:

A. The juvenile is indigent. Unless a preliminary determination of indigency has been made by the office of the state public defender prior to the first appearance the court shall determine if the juvenile is indigent pursuant to §21-1-103(3), C.R.S. and applicable Chief Justice Directives; or

B. The juvenile's parent, guardian, or other legal custodian, except the State or County Department of Human Services, refuses to retain counsel. The court shall advise any non-indigent parent, guardian, or other legal custodian that they will be ordered to reimburse the cost of the representation as provided by Chief Justice Directive; or

C. The court on its own motion determines that counsel is necessary to protect the interests of the juvenile; or

D. The juvenile is in custody of the State or County Department of Human Services.

(b) Waiver. Before accepting any waiver of counsel by the juvenile the court must place the following findings on the record, based on a dialog conducted with the juvenile:

(1) The juvenile is sufficiently mature to make a knowing, intelligent, and voluntary waiver;

(2) The juvenile understands the dispositional and/or sentencing options that are available in the event of an adjudication or conviction of an offense which the juvenile is charged;

(3) The juvenile has not been coerced by another party, like his or her parent, guardian, or other legal custodian;

(4) The juvenile understands that the court will provide counsel if the juvenile's parent, guardian, or other legal custodian is unable or unwilling to retain counsel; and

(5) The juvenile understands the possible consequences from an adjudication or conviction from the offense charged.

(c) Termination or Withdrawal of Counsel.

(1) The appointment of counsel shall continue until:

A. The court's jurisdiction is terminated; or

B. The court finds that the juvenile or his or her parent, guardian, or other legal custodian have sufficient means to retain counsel; or

C. The juvenile's parent, guardian, or other legal custodian no longer refuse to retain counsel; or

D. The juvenile makes a knowing, intelligent, and voluntary waiver of counsel.

(2) A lawyer may withdraw from a case only upon order of the court. In the discretion of the court, a hearing on a motion to withdraw may be waived with the consent of the prosecution and

if a written substitution of counsel is filed which is signed by current counsel, future counsel, and the juvenile. A request to withdraw shall be in writing or may be made orally in the discretion of the court and shall state the grounds for the request. A request to withdraw shall be made as soon as practicable upon the lawyer becoming aware of the grounds for withdrawal. Advance notice of a request to withdraw shall be given to the juvenile before any hearing, if practicable. Such notice to withdraw shall include:

A. That the attorney wishes to withdraw;

B. The grounds for withdrawal;

C. That the juvenile has the right to object to withdrawal;

D. That a hearing will be held and withdrawal will only be allowed if the court approves;

E. That the juvenile has the obligation to appear at all previously scheduled court dates; and

F. That if the request to withdraw is granted, then the juvenile will have the obligation to hire other counsel, request the appointment of counsel by the court, or waive counsel, and elect to represent himself or herself.

(3) Upon setting of a hearing on a motion to withdraw, the lawyer shall make reasonable efforts to give the juvenile and his or her parent, guardian, or other legal custodian actual notice of the date, time, and place of the hearing. No hearing shall be conducted without the presence of the juvenile unless the motion is made subsequent to the failure of the juvenile to appear in court, for reason(s) directly attributable to the juvenile, as scheduled. A hearing need not be held and notice need not be given to a juvenile when a motion to withdraw is filed after a juvenile has failed to appear for a scheduled court appearance and has not reappeared within six months.

Amended and Adopted by the Court, En Banc, October 30, 2014, effective November 1, 2014.

By the Court:

Allison H. Eid
Justice, Colorado Supreme Court