AGENDA
COLORADO SUPREME COURT
RULES OF JUVENILE PROCEDURE COMMITTEE
Friday, December 1, 2023, 9:00 AM
Videoconference Meeting via Webex

I. Call to Order

II. Chair's Report
- A. Minutes of 10/6/2023 meeting **[pages 2–6]**

III. New Business
- A. Recognition of Service (Justice Gabriel & Judge Welling)
- B. Drafting Subcommittee (Judge Welling & Judge Furman)
  1) Memo and Proposal on Disclosure and Discovery Rule **[pages 7–11]**
  2) Memo from OCR **[pages 12–14]**
     1. Reference material **[pages 15-70]**
  3) Memo from ORPC [will be circulated separately]
- C. Gendered Pronouns in Rules (Judge Welling)
  1) Memo from Judge Jones, Chair of C.R.C.P. committee **[pages 71–76]**

IV. Old Business
- A. ICWA Rules Proposal (Judge Furman)
  1) Rules Proposal Out for Public Comment
- B. New Legislation Subcommittee (Melanie Jordan)
- C. Requiring ex parte emergency removal hearings to be on the record (Z Saroyan)
- D. New Members (Judge Welling)

V. Adjourn

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 October 6, 2023 Meeting

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 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	
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	
Anna Ulrich	X	
Pam Wakefield	X	
Abby Young	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison		X
Terri Morrison		X
J.J. Wallace	X	
Special Guests: Melanie Jordan, ORPC & Sheri Danz, OCR		

Meeting Materials:

(1) Draft Minutes of 8/4/2023 meeting
(2) Emails Re 2023 Legislation Impacting Respondents and Draft Rules with Suggested Updates
(3) Email Re Recording Ex Parte Removal Hearings
(4) Memo Re Removing Factual Basis From Admission or Denial Rule
(5) Youth in Court Memo & Proposed Rule
(6) New Order to Interview or Examine Child; Investigation Proposal, Memo and Previous Proposal

Unofficial

Chair's Report

A. The 8/4/23 meeting minutes were approved without amendment.

II. New Business

A. **Recognition of Service**

Tabled until the December meeting.

B. **ORPC Proposals to Address 2023 Legislative Changes**

Melanie Jordan, Policy Director at ORPC, explained that there have been several 2023 legislative changes that have potential impacts to rules: HB23-1024 (Placement with Family and Kin); SB23-039 (Incarcerated Parents); and HB-1027 (Family Time). Some are small tweaks (suggestions provided in the draft rules packet provided). She briefly outlined the suggested changes in the packet. She also pointed to more comprehensive changes that involve new things that are not addressed in the rules, e.g., family time.

After her presentation a committee member asked how she would like to move forward. Melanie suggested: 1) approving the proposal for the small changes and 2) form a subgroup to look at comprehensive changes.

Sheri Danz added that the 1038 subcommittee determined that a rule on hearings is important. She believed focusing on a rule on hearings could frame the discussion because the new legislation affecting ORPC and OCR both seem to impact hearings. A committee member stated that she does not oppose forming a subcommittee, but reminded the committee that the drafting subcommittee's complete focus is on discovery right now, so any involvement by the drafting subcommittee must wait.

As a way to move forward, the chair suggested forming a subcommittee (involving the same people as were on the 1038 subcommittee, provided they are available), to first review the proposal in the packet, which could then go to the drafting subcommittee. Then, as a second step, have the subcommittee look at the constellation of legislation to see if there are holes in the rules. He believed it would be useful for the subcommittee to try to reach consensus on whether rules are appropriate or necessary. If there is a split, the subcommittee can come back to the big committee for philosophical direction. If there is a consensus, undertake drafting of new rules. Magistrate Lococo, Z, Abby Young, and Anna Ulrich volunteered for "New Legislation" subcommittee. The chair asked Melanie to take the lead on the subcommittee, and she agreed.

C. **Requiring Ex Parte Emergency Removal Hearings to Be Recorded**

Unofficial

Z indicated that some jurisdictions, like Weld County, are making FTR records of ex parte hearings and believes this is a good idea. His preference would be to have a mandatory rule or, if not mandatory, make it required absent good cause.

Magistrate Lococo went through his jurisdiction's (Weld) process for emergency removals. A phone call initiates the process. A judicial officer is found. If it's during business hours, then the hearing is held via Webex (occasionally, it's in person). Then paperwork is done, and a shelter hearing is set. These hearings sometimes happen at night, in which case, there is no record. If it's a night or weekend, it's only done over the phone and the paperwork follows the morning of the next business day.

Anna Ulrich was concerned that some jurisdictions, particularly rural ones, do not have access to FTR from their computers and need clerk assistance to make records. Abigail Young indicates that, just this week, in her court (Denver Juvenile), judges have been given computer access to FTR, but she indicates that this is only because she has staffing shortages. Other judicial officer members indicate that they do not have similar access.

One member noted that sometimes a verbal order is given, but no case is filed. In this instance, there is no record of the hearing because there's no case in which to place a minute order or scheduled event showing that there was a hearing. There is no paper trail at all.

One judicial officer mentioned that, because the statute authorizes verbal orders, he felt that requiring a record or a written order doesn't comport with the statute. Recognizing that he's just one voice on the committee, forming a subcommittee and drafting a rule seems unnecessary to him and analogizes to a police officer taking someone into custody. The judicial officer members indicate that there are wide differences throughout the state in procedures.

Other members were ambivalent about the need for a rule but felt that a rule should not increase delay for removing children where time is of the essence.

The chair recommended authorizing Z to look into the matter further and continue to develop it to give a consensus report to the committee to see if it should be pursued further. In the meantime, anyone can offer Z feedback.

III. Old Business

A. ICWA Rules Proposal

The Colorado Supreme Court has put the proposed rules out for comment. Written feedback is due Nov. 30th. A public hearing is set for Dec. 12th. If you would like to speak at the public hearing, sign up by Nov. 30th.

B. Drafting Subcommittee

Unofficial

1) Update

As he mentioned last time, the Chair explained that the subcommittee is currently entirely focused on discovery. He believed that the rule may be ready for the December meeting.

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

Anna provided a reintroduction to this issue. To recap, waiver of factual basis is common practice, but not expressly authorized by statute. The committee was letting the issue simmer since the discussion at the last meeting. Z would like waiver of factual basis expressly authorized by the rule. Others felt remaining silent in the rule maintains the status quo. The committee reviewed the draft rule and considered the recommendation to remove (d).

A member moved to vote to adopt the recommendation. It was seconded. The question was called. The motion passed with one dissenting vote. The recommendation to remove an express authorization to waive the factual basis was adopted.

C. HB22-1038 Review of Draft Rules Subcommittee

1) Memo on Youth in Court

Sheri Danz drew the committee's attention to the memo on p. 80 of the packet to provide background on the issues. Namely, children now have the right to attend and fully participate in all hearings. Because this is a significant shift, the feeling was that a rule to guide implementation would be important. OCR has also put training and practice standards into place to ensure their attorneys are advocating for and advancing this right.

She directed the committee's attention to the overview, which is placed before the proposed rule. The overview reflects what the committee thought was important in thinking about children and youth in court. The overview includes two areas not covered by the proposed rule that the subcommittee identified that may need updating to include children and youth in court: advisements and hearings.

2) Proposed Rule

Sheri summarized the proposed rule on "Children and Youth Attendance and Participation in Court" and the commentary. She also mentioned that (d) on separate hearings applies to more parties than just children. She wanted to highlight that point so that the committee may consider including that portion of the rule somewhere else. For example, in a rule on hearings.

The chair noted that there's more commentary than usual. The subcommittee included the commentary because it's there to assist embrace of this big shift.

Unofficial

A motion was made and seconded to approve the rule for inclusion in the draft rules packet and to send to the drafting subcommittee. Discussion of the motion included thanking Sheri for her leadership on this rule. The question was called. The motion passed unanimously.

D. Subcommittee to redraft Order to Interview or Examine the Child; Investigation.

Anna Ulrich recapped the issue. She explained that this rule fills procedural holes in section 19-3-308, C.R.S. (2023). Because the court can order jail for noncompliance with its order, the subcommittee felt that, to protect due process rights, the statement to the court to secure the order should be sworn. In reviewing the options presented, the committee came to consensus that option 1 with the "good cause" language was the better option. The committee felt that this broader language, which echoed section 19-3-308(b)(3) (stating "upon good cause shown"), was the preferable course.

A motion was made to adopt option 1 with "must" instead of should. The motion was seconded. A brief discussion was held mostly thanking the subcommittee for their thorough work. The statute was very confusing, and the subcommittee did a good job wrestling with it. The vote was called, and the motion passed unanimously.

Other announcements:

2024 Meeting Schedule: The chair recommended keeping Webex because it helps facilitate greater participation. J.J. will send out the 2024 Webex invites.

Committee membership: There has been some turnover on committee. In December, think about where we can find additional members to ensure the representation we need.

IV. Adjourn

The meeting adjourned around 10:30 AM. The next meeting is December 1st at 9 AM via Webex. 2024 Meeting Schedule: February 2; April 5; June 7; August 2; October 4; December 6.

Respectfully Submitted,

J.J. Wallace
Staff Attorney, Colorado Supreme Court

Unofficial

Memorandum

To: C.R.J.P. Committee
From: C.R.J.P. Drafting Subcommittee
Re: Proposed
Date: 12/1/2023

The Drafting Subcommittee offers the following rule to the C.R.J.P. committee for approval. The proposal reflects the consensus of the subcommittee. However, the subcommittee was unable to reach agreement on three issues and defers those issues to the C.R.J.P. committee:

I. Should the presumptive limits on discovery (number of oral depositions; written depositions; requests for admission; interrogatories; & requests for production) be tied to the entire case or tied to each contested hearing?

II. What should the limits be on the total number of: oral depositions; written depositions; requests for admission; interrogatories; & requests for production allowed?

III. In (i)(4) (Oral Depositions), the subcommittee agrees that a party would need a court order to take any child's or youth's deposition. The committee also agrees that it's not in the best interests of children under 12 to be deposed. The subcommittee cannot agree about:
- whether there should be an express presumption that taking a deposition of a child or youth (age 12+) is not in that child's or youth's best interests; or
- whether the rule should be silent and not express such presumption to children or youth (age 12+)?

Disclosure and Discovery in Dependency and Neglect Cases

(a) Purposes of this Rule.

(1) Dependency and neglect cases are unique civil cases requiring an intricate balance of the important and interrelated rights and interests of parents, legal guardians and/or legal custodians; children and youth; and the government.

(2) In light of the purposes of the Children's Code and to avoid unnecessary delay, dependency and neglect cases require a particularized approach to discovery, which is reflected in this rule.

(3) This rule provides a uniform procedure for resolution of all disclosure and discovery issues in dependency and neglect cases in a manner that furthers the purposes of the Children's Code.

(b) **Active Case Management**. It is incumbent upon the court to actively manage dependency and neglect cases to eliminate delay, including actively monitoring disclosures and discovery.

(c) **Persons Exempted from Disclosures and Discovery.** (1) Non-parties, and (2) alleged or presumptive parents, guardians, or custodians whose legal rights have not been established are exempted from obtaining and providing disclosures and discovery, unless the court orders otherwise. 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.

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

(A) any information and documentation related to a parent's, child's, or other family member's potential Native American heritage, including but not limited to tribal identity cards;

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

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

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

(f) **Disclosures on Written Request.**

(1) **By Petitioner**. At any time and upon written request, the petitioner must disclose to the requesting respondent or child, through their guardian ad litem or counsel for youth, the following items related to the case in its possession, custody, or control. Disclosures must be made no later than 21 days after the request is made, or such other time as the parties agree or the court determines reasonable. Written notice of any of the following items that are not disclosed and a brief explanation of the reason for withholding them must be given by the petitioner to the requesting respondent or child, through their guardian ad litem or counsel for youth. Nothing in this rule prevents the court from prohibiting or limiting disclosure of the items listed below for good cause.

(A) Safety and risk assessments;

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

(C) Confirmation of county referrals to service providers;

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

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

(F) Law enforcement reports;
(G) Photographs and videos;
(H) Forensic interviews; and
(I) When permitted under state and federal law or when an appropriate waiver of privilege or confidentiality has been provided:
(I) All court ordered evaluations, treatment records, and service provider notes of any child or respondent;
(II) Educational, medical, dental, mental health, substance abuse, and domestic violence documents and information; and
(III) Any item in the file of the department if requested with specificity.

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

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

(1) Names, addresses, and telephone numbers of all witnesses who will or may be offered at the contested trial or hearing and a short summary of their anticipated testimony;
(2) Curricula vitae, résumé, or statement of the qualifications of each witness who will or may be offered as an expert;
(3) Written reports of witnesses who will or may be offered as an expert. If no written report has been prepared, a summary of any expert witness's opinion that will be introduced at the contested trial or hearing; and
(4) A list of all other evidence intended to be presented at the contested trial or hearing. Copies of evidence that will or may be offered at the contested trial or hearing must be provided if not previously disclosed.

(h) Other Disclosures. Other disclosures may be obtained and provided as ordered by the court.

(i) Discovery.

(1) **Scope.**
(A) Discovery may be obtained and provided regarding any matter not privileged, relevant to any matter presented to the court for resolution in the case, and proportional to the needs of the case.
(B) Guardians ad litem and children under 12 are not required to produce discovery unless ordered by the court for good cause shown.

(2) **Resolution of Discovery Disputes.** Discovery disputes must be resolved as quickly and informally as possible. Before bringing a discovery dispute to the court, including a request for protection orders, the parties must confer or attempt to confer in good faith to resolve the dispute. If a discovery dispute is brought to the attention of the

court, the court must exercise due diligence to resolve the discovery dispute within 48 hours, or as soon as practicable.

(3) **Deadlines.** Unless otherwise agreed to by the parties or ordered by the court:
(A) all oral depositions and depositions by written examination shall be completed at least 21 days before a contested hearing; and
(B) all requests for admissions, interrogatories, and requests for production shall be propounded at least 35 days before a contested hearing.

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

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

(6) **Requests for Admission.** A party may serve on each party no more than 20 discrete requests for admissions.

(7) **Interrogatories**. Throughout a case, a party may serve on each party no more than 20 discrete interrogatories.

(8) **Requests for Production**. Throughout a case, a party may serve on each party no more than 20 discrete requests for production of documents.

(9) **Protective Orders**. For good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
(A) that the disclosure or discovery not be had;
(B) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place or the allocation of expenses;
(C) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
(D) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;
(E) that discovery be conducted with no one present except persons designated by the court; and
(F) that a deposition, after being sealed, be opened only by order of the court.

(10) **Expansion or Limitation for Good Cause.** The trial court may limit or expand discovery for good cause considering factors such as the purposes of the Children's Code, the complexity of the case, the importance of the issues at stake, the parties' alternative access to the relevant information, the importance of discovery in resolving the issues before the juvenile court, and whether the burden or delay associated with the proposed discovery outweighs its likely benefits.

(j) Duty to Supplement Disclosures and Discovery. Unless expressly waived by the receiving party, parties who have provided disclosures or discovery must supplement disclosures or discovery when such parties learn that previously-provided disclosures or discovery are incomplete or incorrect in some material respect and the additional or corrective information has not otherwise been made known to the other parties from other

disclosures or discovery. The duty to supplement or correct extends to the production of expert reports disclosed pursuant to these rules. Unless expressly waived by the receiving party, updated disclosures and discovery must be provided as soon as reasonably practicable.

(k) Sanctions and Other Remedial Measures. The court may exercise its discretion to impose sanctions and other remedial measures for disclosure and discovery violations in a manner consistent with the purposes outlined in subsection (a).

COMMENT

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

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

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

[4] Good cause findings for expanding or limiting discovery should be made with specificity and on the record. A juvenile court should be cautious in limiting discovery. *See Silva v. Basin W., Inc.*, 47 P.3d 1184, 1188 (Colo. 2002) ("We liberally construe discovery rules to eliminate surprise at trial, discover relevant evidence, simplify issues, and promote the expeditious settlement of cases."); *Cameron v. Dist. Ct. In & For First Jud. Dist.*, 193 Colo. 286, 290, 565 P.2d 925, 928 (1977) (discovery rules "should be construed liberally to effectuate the full extent of their truth-seeking purpose.").

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

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

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

MEMORANDUM

TO: Juvenile Rules Committee
FROM: Anna Ulrich, Staff Attorney, Office of the Child's Representative
RE: Proposed Disclosure and Discovery Rule: OCR Position Statement
DATE: November 27, 2023

I. THE OCR APPROACH

At the request of the Office of Respondent Parent Counsel, the Juvenile Rules Committee directed the current C.R.J.P. Drafting Subcommittee to prioritize the discovery rule in its work. In its work on the Drafting Subcommittee, OCR has attempted to approach the process with a spirit of collaboration. While having a uniform discovery rule, beyond disclosures, was not a priority for the OCR and does raise some concerns, OCR deferred to the work of the previous drafting subcommittee and the varying perspectives of other stakeholders on the current Drafting Subcommittee, who see a need for a discovery rule that specifically authorizes disclosures, interrogatories (ROGs), requests for admission (RFAs), request for production of documents (RPDs), and depositions. Thus, OCR approached the process with a specific focus on protecting children and youth from discovery requests that are unduly burdensome, unreasonable, or have significant implications for timely permanency. *See* C.J.D. 04-06 § (V)(D)(1)(c).

In order to provide background and context to the Drafting Subcommittee, OCR reviewed discovery rules from three other states with client-directed youth counsel provided by J.J. Wallace. *See* Ex. A, Sample Discovery Rules. The analysis demonstrated that Colorado's proposed discovery rule is substantially more detailed than other states. Further, in reaching out to practitioners in these states, OCR learned that, while disclosures were commonplace in these case types, the use of traditional discovery processes was very limited and almost never directed towards children or youth. The OCR reported this research to the Drafting Subcommittee.

II. ADOPTION OF THE DISCLOSURE AND DISCOVERY RULE

Outside of the remaining issues to be decided by the Juvenile Rules Committee, discussed in Section III of this memo below, the OCR has no objection to the Juvenile Rules Committee promulgating the proposed Disclosure and Discovery Rule as a stand-alone rule prior to the adoption of the rules package. The OCR also has no objection to the Juvenile Rules Committee directing the Drafting Subcommittee to conduct additional work to finalize the language and formatting of the proposed rule; and/or to formulate the specific language on the outstanding issues discussed below once the Juvenile Rules Committee has made substantive determinations on the items.

III. OUTSTANDING ISSUES

As for the remaining issues to be decided by the Juvenile Rules Committee, the OCR offers the following perspective on each:

I. Should the presumptive limits on discovery (number of oral depositions; written depositions; requests for admission; interrogatories; & requests for production) be tied to the entire case or tied to each contested hearing?

The OCR believes there should be some limits on discovery for the duration of the case. It is important to note that, in a particular D&N case, there can be numerous contested hearings (shelter, adjudication, disposition, placement, permanency planning, APR/Guardianship, termination, etc). If the discovery limits reset with each contested hearing, a D&N case could easily become bogged down with excessive discovery requests. Options to address this concern include: 1) cap the discovery requests for the case total, as the current proposed rules do; 2) cap the discovery requests to pre- and post-adjudication; or 3) list the various hearing types in the rule and propose a certain number of discovery requests for each hearing type. The OCR's preference is to limit the parties' discovery requests per case, noting that under the current proposed rule, the court may expand or limit discovery for good cause shown.

II. *What should the limits be on the total number of: oral depositions; written depositions; ROGs, RFAs, RPDs?*

The OCR believes that setting a default limit on the amount of discovery is an arbitrary endeavor which does not account for case-specific needs. However, because the proposed rule allows a court to limit or expand discovery for good cause, the OCR does not have a strong objection to the inclusion of this type of default provision. The OCR simply requests that the Juvenile Rules Committee consider the overarching purposes of the Children's Code, including a focus on timely resolution that serves the child's best interests, in determining what type of baseline amount of discovery should be permitted. *See* C.R.S. § 19-1-102(1)(c).

For instance, if the Juvenile Rules Committee decides to tie the limits on discovery to the *entire case*, as the current draft rules do, the OCR believes the prior drafting subcommittee's proposal of 4 oral depositions; 20 discrete RFAs; 20 discrete ROGs; and 20 discrete RPDs was a fair proposal. If the Juvenile Rules Committee decides to tie the limits of discovery to *each hearing*, the OCR would propose a similar reduction in the number of discrete discovery requests (such as 1 oral deposition per hearing, and 5 of each: ROGs/RFAs/RPDs). It is worth noting that D&N cases are currently operating under a default of zero ROGs/RFAs/RPDs absent court order (per C.R.C.P. 16(a) and 26(a)), so even the proposal of 20 each per case will be a significant shift in practice for many districts.

III. *In (i)(4) (Oral Depositions), the subcommittee agrees that a party would need a court order to take any child's or youth's deposition. The committee also agrees that it's not in the best interests of children under 12 to be deposed. The subcommittee cannot agree about:*
- *whether there should be an express presumption that taking a deposition of a child or youth (age 12+) is not in that child's or youth's best interests; or*
- *whether the rule should be silent and not express such presumption to children or youth (age 12+)?*

The OCR proposes that the Juvenile Rules Committee consider retaining the following sentence from the existing draft discovery rule in the current oral deposition section: "It is presumed that depositions of children are not in their best interests and require a court order supported by good cause shown." Clearly, depositions are the most invasive, stressful, and potentially traumatic form of discovery that could be imposed on a child or youth. A rule which requires parties seeking to depose a child or youth overcome a presumption that this procedure is not in the child/youth's best interests comports with the

purposes of the Children's Code.[1] These purposes and their inherent protections apply regardless of the child or youth's age (youth ages 12-18 are still considered children under the Children's Code, C.R.S. § 19-1-103(21)).[2]

A best interest determination is particularly important give the current proposed Comment [4], which provides: "A juvenile court should be cautious in limiting discovery." Because this comment, based in civil rather than dependency caselaw, might be understood by some courts as encouraging expansive discovery orders, it is imperative that the rule contain an explicit presumption that depositions of children and youth are not in their best interests to continue to align these rules with the purposes of the Children's Code. *See* Fn 1, supra. If parity between parties is the primary concern of the Juvenile Rules Committee with this approach, OCR would propose that the rule provides that a deposition of <u>any</u> party requires a court order based upon a finding of good cause.

[1] Although the purposes of the Children's Code as described in C.R.S. § 19-1-102 are multi-faceted, taking the purposes together as a whole, the clear intent of the Children's Code is to ensure that children's best interests are the primary focus of all actions taken under the Code. "The overriding purpose of the Children's Code is to protect the welfare and safety of children in Colorado by providing procedures through which their best interests can be ascertained and served." *A.M. v. A.C.*, 296 P.3d 1026, 1030 (Colo. 2013) (citing *L.G. v. People*, 890 P.2d 647, 654 (Colo. 1995); *see also People in Interest of S.N.,* 329 P.3d 276, 279 (Colo. 2014). "To carry out these purposes, the provisions of [the Children's Code] shall be liberally construed to serve the welfare of children and the best interests of society." C.R.S. § 19-1-102(2).

[2] Currently, the default is that depositions of parties in D&N cases necessitate a court order. *See* C.R.C.P. 16(a), 26(a). Nothing in the statutory language of HB 22-1038, or its legislative history, indicates that this legislation was intended to subject youth 12 and up to depositions or other invasive discovery practices. Ch. 92, secs. 1-37, 2022 Colo. Sess. Laws, 430, 434-5 ("HB 22-1038"). Instead, the clear purpose of the legislation was to increase youth's voice and participation in these matters without punishing them for such participation. *See id*.

Arizona Revised Statutes Annotated
Rules of Procedure for the Juvenile Court (Refs & Annos)
Part III. Child Dependency and Guardianship, Termination of Parental Rights
1. General Provisions; Parties and Participants

17B A.R.S. Juv.Ct.Rules of Proc., Rule 302
Formerly cited as AZ ST JUV CT Rule 37

Rule 302. Definitions

Effective: July 1, 2022
Currentness

(a) "Parent" as used in Part III includes those defined as such in Rule 102 and, except in termination proceedings, also includes a guardian appointed by the court under Title 8 or Title 14 and an Indian custodian.

(b) "Party" means a child, parent, guardian, DCS, any petitioner, and any person, Indian tribe, or entity that the court has allowed to intervene.

(c) "Participant" includes any person permitted by the court or authorized by law to participate in the proceedings. Participants must be notified of all applicable proceedings as required by law or court order. A participant is not a party.

(d) Definitions Under ICWA.

(1) "*Parent*" means any biological parent of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established.

(2) *"Indian Child"* means any unmarried person under the age of 18 who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of the Indian tribe. *See* 25 C.F.R. § 23.2. If there is reason to know that the child is an Indian child, the court must treat the child as an Indian child unless and until it is determined on the record that the child does not meet the definition of an Indian child pursuant to 25 C.F.R. § 23.107.

(3) *"Indian Child's Tribe"* means the Indian tribe in which an Indian child is a member or eligible for membership or, in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.

(4) *"Indian Custodian"* means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law, or to whom temporary physical care, custody, and control has been transferred by the parent of the child.

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(5) *"Indian Tribe"* means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. § 1602(c).

(6) *"Extended Family Member"* means a person as defined by law or custom of the Indian child's tribe, or, in the absence of such law or custom, a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, sister or brother, sister-in-law or brother-in-law, niece or nephew, first or second cousin, or step-parent.

Credits

Added Dec. 8, 2021, effective July 1, 2022.

Editors' Notes

APPLICATION

<The July 1, 2022 amendments apply in all cases filed on or after that date except when this application would be infeasible or work an injustice, then the former rule will apply.>

17B A. R. S. Juv. Ct. Rules of Proc., Rule 302, AZ ST JUV CT Rule 302

State Court Rules are current with amendments received and effective through July 15, 2023. The Code of Judicial Administration is current with amendments received through July 15, 2023.

End of Document

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Arizona Revised Statutes Annotated
Rules of Procedure for the Juvenile Court (Refs & Annos)
Part III. Child Dependency and Guardianship, Termination of Parental Rights
2. General Provisions on Proceedings and Procedures

17B A.R.S. Juv.Ct.Rules of Proc., Rule 313
Formerly cited as AZ ST JUV CT Rule 47

Rule 313. Release of Information

Effective: July 1, 2022
Currentness

(a) Records Confidential Generally. All records of proceedings under Rule 327 and of dependency, guardianship under A.R.S. §§ 8-871 through 8-874, termination of parental rights, and other related proceedings are confidential and must be withheld from public inspection unless authorized by law, rule, or court order.

(1) *Access without Court Order.* A parent, petitioner, or when named as a party, a court-appointed legal guardian or DCS, may inspect and copy case records while that individual remains a party to the case. On appeal, a party may inspect and copy records created prior to the ruling upon which the appeal is taken. The following other individuals and entities are authorized to inspect and copy case records without review by the court:

(A) a current party's attorney of record and current GAL;

(B) Arizona judicial officers, clerks, administrators, professional, or other staff employed by or working under supervision of the court, including staff of the Administrative Office of the Courts, Dependent Children's Services Division, or the local foster care review boards as needed to carry out their assigned duties;

(C) CASAs pursuant to A.R.S. § 8-522(F);

(D) a designated member or staff of the Arizona Commission on Judicial Conduct performing duties under the Commission's rules;

(E) a court-appointed legal guardian not a party to the case who requests a certified copy of the guardian's appointment order during the term of the guardian's appointment; and

(F) a designee of ADJC as needed to carry out the designee's assigned duties for any individual who is subject to a commitment order.

(2) *Access by Court Order.* The following individuals and entities must obtain a court order before inspecting the case record:

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(A) an individual who was the subject of a dependency, a guardianship under A.R.S. §§ 8-871 through 8-874, or a termination of parental rights action as a minor;

(B) an individual who is not qualified under subpart (a)(1) or whose parental rights were terminated or who was dismissed from the case;

(C) a designee of DCS when DCS is not a party in the case upon a showing that inspection is required to carry out DCS responsibilities;

(D) a foster parent to inspect and copy records other than records a foster parent is authorized to inspect under A.R.S. § 8-514(D)(5);

(E) a participant as defined under Rule 302(c); and

(F) any other individual or entity not otherwise authorized by this rule to inspect records.

(b) Inspection of Court Records. Any person may file a request with the court to inspect court records in a case involving child abuse, abandonment, or neglect that has resulted in a fatality or near fatality. In ruling on this request, the court must consider:

(1) whether doing so is in the child's best interests;

(2) whether inspection of the records would endanger the child's physical or emotional well-being or the safety of any other person;

(3) the privacy rights of the child, the child's siblings, parents, guardians, caregivers, and any other person whose privacy rights the court determines need protection;

(4) whether all the parties have agreed to allow the inspection;

(5) the wishes of a child at least 12 years of age who is a party to the proceeding; and

(6) whether inspection of the records could cause specific material harm to a criminal investigation.

(c) Redaction. If the court grants the request for inspection of court records, the court must redact any information subject to the requirements of A.R.S § 8-525(B)(1) through (6) and A.R.S. § 8-807.01(A)(1).

Credits
Added Dec. 8, 2021, effective July 1, 2022.

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Editors' Notes

APPLICATION

<The July 1, 2022 amendments apply in all cases filed on or after that date except when this application would be infeasible or work an injustice, then the former rule will apply.>

17B A. R. S. Juv. Ct. Rules of Proc., Rule 313, AZ ST JUV CT Rule 313
State Court Rules are current with amendments received and effective through July 15, 2023. The Code of Judicial Administration is current with amendments received through July 15, 2023.

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17B A.R.S. Juv.Ct.Rules of Proc., Rule 315
Formerly cited as AZ ST JUV CT Rule 44

Rule 315. Disclosure and Discovery

Effective: July 1, 2022
Currentness

(a) Generally.

(1) *Duty to Disclose.* A party must disclose to other parties all relevant information that is not privileged. A party must allow other parties to inspect materials, with or without copying regardless of whether those materials are in physical, paper, or electronic form.

(2) *Manner of Disclosure.* A party should disclose information in the least burdensome and most cost-effective manner.

(3) *Limits on Secondary Dissemination.* A person who receives disclosure must maintain the confidentially of the information received and must not further disclose the information unless disclosure is authorized by A.R.S. § 8-807 or court order.

(b) Time Limits for Disclosure for Preliminary Protective Hearings. The parties must disclose all documents in their possession that are subject to disclosure no later than 24 hours before the preliminary protective hearing. If disclosure is untimely, the court may continue the hearing.

(c) Ongoing Disclosure Requirement. Unless the court orders otherwise, any relevant document thereafter received by or prepared by a party must be disclosed no later than 10 days after its receipt or preparation. If a party receives or prepares a document fewer than 10 days before a hearing, the party must disclose it as soon as practicable before the hearing.

(d) Pretrial Disclosure Statements in Contested Dependency, Title 8 Guardianship, and Termination Adjudication Hearings.

(1) Unless the court orders otherwise, the parties must file pretrial disclosure statements containing the following information no later than 30 days prior to the contested adjudication:

(A) the uncontested facts deemed material;

(B) the contested issues of fact and law that may be material or applicable;

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(C) a statement of other issues of fact or law that the party believes to be material;

(D) a list of the witnesses the party intends to call at trial, including the names, addresses, email addresses, and telephone numbers of the witnesses and a description of the substance of the witness's expected testimony. Absent good cause, a party may not call a witness at trial who was not disclosed in accordance with this rule. A disclosure statement must note if a witness's testimony will be offered in the form of a deposition; and

(E) a list and copies of all exhibits the party intends to use at trial. If a party objects to the admission of an exhibit, the party must file a notice of objection stating the specific grounds for each objection no later than 10 days after receiving the list of exhibits. A party waives specific objections or grounds not identified in the notice of objection unless the court allows otherwise. A party may not use exhibits at trial other than those disclosed in accordance with this rule, except for good cause.

(2) Unless the court orders otherwise, parties may supplement their list of witnesses and exhibits for the adjudication hearing no later than 10 days before the hearing.

(e) Methods of Discovery. The parties may agree to utilize the discovery methods in Civil Rules 26 through 37. Absent such agreement, a party may utilize those discovery methods only after the court grants a party's motion stating why these methods are necessary. Failure to complete discovery before the date set for the dependency adjudication hearing does not constitute good cause or extraordinary circumstances under Rule 338(b).

(f) Disclosure in Contested Hearings Other than Adjudications. If information is intended for use in a contested hearing other than a dependency, guardianship, or termination adjudication, parties must disclose the information as follows:

(1) if the contested hearing requires a report prepared by DCS, all parties must disclose relevant information by the date the report is due according to the statute or rule; or

(2) if the contested hearing does not require a report prepared by DCS, the parties must disclose all relevant information no later than 10 days prior to the hearing or as ordered by the court.

(g) Sanctions. Upon a party's motion or on its own, the court may impose sanctions on a party who fails to disclose information in a timely manner. Sanctions may include granting a continuance, precluding evidence, or entering any order the court deems appropriate. Any sanction should accord with the intent of these rules as set forth in Rule 301 and should not exclude competent and potentially significant evidence that bears on the child's best interests.

Credits
Added Dec. 8, 2021, effective July 1, 2022.

Editors' Notes

APPLICATION

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<The July 1, 2022 amendments apply in all cases filed on or after that date except when this application would be infeasible or work an injustice, then the former rule will apply.>

Notes of Decisions (4)

17B A. R. S. Juv. Ct. Rules of Proc., Rule 315, AZ ST JUV CT Rule 315
State Court Rules are current with amendments received and effective through July 15, 2023. The Code of Judicial Administration is current with amendments received through July 15, 2023.

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From: wallace, jennifer
Sent: Tuesday, August 15, 2023 8:05 AM
To: welling, craig; furman, david; Anna Ulrich; Jennifer Mullenbach; Zaven Saroyan; Joe Pickard; johnson, clancy; kemp, jennifer; gabriel, richard
Cc: Sheri Danz
Subject: FW: discovery rules

Good morning,

Sheri reached out to someone she knows in AZ asking for feedback on their discovery rule. Here's the response she received.

Thanks,

J.J.

From: Sheri Danz <sheridanz@coloradochildrep.org>
Sent: Monday, August 14, 2023 5:41 PM
To: wallace, jennifer <jennifer.wallace@judicial.state.co.us>
Subject: [External] Fwd: discovery rules

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.

Hi JJ,

I reached out to my contact in AZ, and this is what he shared. I can follow up with any questions after the meeting. He runs the Maricopa county child law office but also sits on statewide committees and has practiced in other jurisdictions.

Sent from my iPhone

Begin forwarded message:

> **From:** "Bill Owsley (OLA)" <Bill.Owsley@maricopa.gov>
> **Date:** August 14, 2023 at 4:44:12 PM MDT
> **To:** Sheri Danz <sheridanz@coloradochildrep.org>
> **Subject: RE: discovery rules**
>
> I'll try. :)

In practice, 98% of the disclosure comes from DCS/DCS providers.
Attorney disclose relevant info when received (unless privileged in some way).
Generally speaking, deposition, interrogatories, and requests for admissions don't occur very often at all. Almost never.
You may see them in private cases where they're looking to bill…
Happy to talk more and in more detail.
You are always free to call my cell.
You might want to text me first to make sure I'm free. :)

From: Sheri Danz <sheridanz@coloradochildrep.org>
Sent: Monday, August 14, 2023 2:50 PM
To: Bill Owsley (OLA) <Bill.Owsley@Maricopa.Gov>
Subject: discovery rules

Hi Bill,

I hope all is well with you. I'm reaching out to see if you have any thoughts about how your discovery rules work in practice and whether they provide the appropriate protections for child parties.

Our juvenile rules committee is currently looking for examples of discovery rules in client-directed states and has pulled up AZ Rules 302, 315, etc. I was struck by what appears to be an affirmative obligation by all parties to disclose all relevant information other than privileged information, and I was wondering how this actually plays out in practice. If I'm reading your rules correctly, it also appears that deposition, interrogatories, and requests for admission happen only by court order. I'm wondering if my reading is correct and how this actually plays out in practice.

I appreciate your thoughts about these questions above as well as any other thoughts you have about discovery in AZ. Our committee is meeting Wednesday afternoon, so if there is any chance of getting me some preliminary thoughts before then that would be awesome.

Thank you!

<image002.png>
Sheri Danz (She/her/hers)
Deputy Director | Office of the Child's Representative (OCR)
Ralph L. Carr Colorado Judicial Center | 1300 Broadway, Suite 320, Denver, CO 80203
Direct: 720-351-4342| Main: 303-860-1517 | www.coloradochildrep.org

Practice Book 1998, Sec. 26-1

Sec. 26-1. Definitions Applicable to Proceedings on Juvenile Matters

Effective: January 1, 2023
Currentness

In these definitions and in the rules of practice and procedure on juvenile matters, the singular shall include the plural and the plural, the singular where appropriate.

(a) The definitions of the terms "child," "abused," "delinquent," "delinquent act," "neglected," "uncared for," "alcohol-dependent," "drug-dependent," "serious juvenile offense," "serious juvenile offender," "serious juvenile repeat offender," "predispositional study," and "risk and needs assessment" shall be as set forth in General Statutes § 46b-120. The definition of "victim" shall be as set forth in General Statutes § 46b-122.

(b) "Commitment" means an order of the judicial authority whereby custody and/or guardianship of a child are transferred to the Commissioner of the Department of Children and Families.

(c) "Complaint" means a written allegation or statement presented to the judicial authority that a child's conduct as a delinquent brings the child within the jurisdiction of the judicial authority as prescribed by General Statutes § 46b-121.

(d) "Guardian" means a person who has a judicially created relationship with a child, which is intended to be permanent and self-sustaining, as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person and decision making.

(e) "Hearing" means an activity of the court on the record in the presence of a judicial authority and shall include (1) "Adjudicatory hearing": A court hearing to determine the validity of the facts alleged in a petition or information to establish thereby the judicial authority's jurisdiction to decide the matter which is the subject of the petition or information; (2) "Contested hearing on an order of temporary custody" means a hearing on an ex parte order of temporary custody or an order to appear which is held not later than ten days from the day of a preliminary hearing on such orders. Contested hearings shall be held on consecutive days except for compelling circumstances or at the request of the respondent; (3) "Dispositive hearing": The judicial authority's jurisdiction to adjudicate the matter which is the subject of the petition or information having been established, a court hearing in which the judicial authority, after considering the social study or predispositional study and the total circumstances of the child, orders whatever action is in the best interests of the child or family and, where applicable, the community. In the discretion of the judicial authority, evidence concerning adjudication and disposition may be presented in a single hearing; (4) "Preliminary hearing" means a hearing on an ex parte order of temporary custody or an order to appear or the first hearing on a petition alleging that a child is uncared for, abused, or neglected. A preliminary hearing on any ex parte custody order or order to appear shall be held not later than ten days from the issuance of the order; (5) "Plea hearing" is a hearing at which (A) a parent or guardian who is a named respondent in a neglect, uncared for or dependency petition, upon being advised of his or her rights,

admits, denies, or pleads nolo contendere to allegations contained in the petition; or (B) a child who is a named respondent in a delinquency petition or information enters a plea of not guilty, guilty, or nolo contendere upon being advised of the charges against him or her contained in the information or petition; (6) "Probation status review hearing" means a hearing requested, ex parte, by a probation officer regardless of whether a new offense or violation has been filed. The court may grant the ex parte request, in the best interest of the child or the public, and convene a hearing on the request within seven days.

(f) "Indian child" means an unmarried person under age eighteen who is either a member of a federally recognized Indian tribe or is eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian tribe, and is involved in custody proceedings, excluding delinquency proceedings.

(g) "Juvenile residential center" means a hardware-secured residential facility operated by the court support services division of the Judicial Branch that includes direct staff supervision, surveillance enhancements and physical barriers that allow for close supervision and controlled movement in a treatment setting for preadjudicated juveniles and juveniles adjudicated as delinquent.

(h) "Parties" includes: (1) The child who is the subject of a proceeding and those additional persons as defined herein; (2) "Legal party": Any person, including a parent, whose legal relationship to the matter pending before the judicial authority is of such a nature and kind as to mandate the receipt of proper legal notice as a condition precedent to the establishment of the judicial authority's jurisdiction to adjudicate the matter pending before it; and (3) "Intervening party": Any person who is permitted to intervene in accordance with Section 35a-4.

(i) "Permanency plan" means a plan developed by the Commissioner of the Department of Children and Families for the permanent placement of a child in the commissioner's care. Permanency plans shall be reviewed by the judicial authority as prescribed in General Statutes §§ 17a-110(b), 17a-111b(c), 46b-129(k), and 46b-149(h).

(j) "Petition" means a formal pleading, executed under oath, alleging that the respondent is within the judicial authority's jurisdiction to adjudicate the matter which is the subject of the petition by reason of cited statutory provisions and seeking a disposition. Except for a petition for erasure of record, such petitions invoke a judicial hearing and shall be filed by any one of the parties authorized to do so by statute.

(k) "Information" means a formal pleading filed by a prosecutor alleging that a child in a delinquency matter is within the judicial authority's jurisdiction.

(*l*) "Probation supervision" means a legal status whereby a juvenile who has been adjudicated delinquent is placed by the court under the supervision of juvenile probation for a specified period of time and upon such terms as the court determines.

(m) "Probation supervision with residential placement" means a legal status whereby a juvenile who has been adjudicated delinquent is placed by the court under the supervision of juvenile probation for a specified period of time, upon such terms as the court determines, that include a period of placement in a secure or staff-secure residential treatment facility, as ordered by the court, and a period of supervision in the community.

(n) "Respondent" means a person who is alleged to be a delinquent, or a parent or a guardian of a child who is the subject of a petition alleging that the child is uncared for, abused, neglected, or requesting termination of parental rights.

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(*o*) "Secure-residential facility" means a hardware-secured residential facility that includes direct staff supervision, surveillance enhancements and physical barriers that allow for close supervision and controlled movement in a treatment setting.

(p) "Specific steps" means those judicially determined steps the parent or guardian and the Commissioner of the Department of Children and Families should take in order for the parent or guardian to retain or regain custody of a child.

(q) "Staff-secure facility" means a residential facility: (1) that does not include construction features designed to physically restrict the movements and activities of juvenile residents who are placed therein; (2) that may establish reasonable rules restricting entrance to and egress from the facility; and (3) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision.

(r) "Staff-secure residential facility" means a residential facility that provides residential treatment for children in a structured setting where the children are monitored by staff.

(s) "Supervision" includes: (1) "Nonjudicial supervision": A legal status without the filing of a petition or a court conviction or adjudication but following the child's admission to a complaint wherein a probation officer exercises supervision over the child with the consent of the child and the parent; (2) "Protective supervision": A disposition following adjudication in neglected, abused or uncared for cases created by an order of the judicial authority requesting a supervising agency other than the court to assume the responsibility of furthering the welfare of the family and best interests of the child when the child's place of abode remains with the parent or any suitable or worthy person, or when the judicial authority vests custody or guardianship in another suitable and worthy person, subject to the continuing jurisdiction of the court; and (3) "Judicial supervision": A legal status similar to probation for a child subject to supervision pursuant to an order of suspended proceedings under General Statutes § 46b-133b or § 46b-133e.

(t) "Take into Custody Order" means an order by a judicial authority that a child be taken into custody and immediately turned over to a Juvenile Residential Center Superintendent where probable cause has been found that the child has committed a delinquent act, there is no less restrictive alternative available, and the child meets the criteria set forth in Section 31a-13.

Credits

[Amended June 24, 2002, effective January 1, 2003; June 30, 2008, effective January 1, 2009; June 21, 2010, effective January 1, 2011; June 20, 2011, effective January 1, 2012; June 15, 2012, effective January 1, 2013; June 13, 2014, effective January 1, 2015; July 16, 2019, effective January 1, 2020; June 11, 2021, effective January 1, 2022; July 12, 2022, effective January 1, 2023.]

Editors' Notes

TECHNICAL CHANGE

2020 Corrections

Subparagraphs in subsection (g)(5) have been designated with capital letters. In subsection (a), "child" was deleted following "alcohol-dependent" and "drug-dependent."

2023 Corrections

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In what is now subsection (m), “where by” was deleted and replaced with “whereby.” In addition, in what is now subsection (q), “Staff secure” was deleted and replaced with “Staff-secure.”

Notes of Decisions (6)

Practice Book 1998, Sec. 26-1, CT R SUPER CT JUV Sec. 26-1
Current with amendments received through July 15, 2023. Some rules may be more current, see credits for details.

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Connecticut General Statutes Annotated
Rules for the Superior Court (Refs & Annos)
Procedure in Juvenile Matters
Chapter 34A. Pleadings, Motions and Discovery Neglected, Abused and Uncared for Children and Termination of Parental Rights

Practice Book 1998, Sec. 34a-20

Sec. 34a-20. Discovery

Currentness

(a) Access to the records of the Department of Children and Families shall be permitted in accordance with General Statutes § 17a-28 and other applicable provisions of the law.

(b) Pretrial discovery by interrogatory, production, inspection or deposition of a person may be allowed with the permission of the judicial authority only if the information or material sought is not otherwise obtainable and upon a finding that proceedings will not be unduly delayed.

(c) Upon its own motion or upon the request of a party, the judicial authority may limit discovery methods, and specify overall timing and sequence, provided that the parties shall be allowed a reasonable opportunity to obtain information needed for the preparation of their case. The judicial authority may grant the requested discovery, order reciprocal discovery, order appropriate sanctions permitted under Section 13-14 for any clear misuse of discovery or arbitrary delay or refusal to comply with a discovery request, and deny, limit, or set conditions on the requested discovery, including any protective orders under Section 13-5.

These are cites are to the CT rules of civil procedure

(d) If the judicial authority permits discovery, the provisions of Sections 13-1 through 13-11 inclusive, 13-14, 13-16, 13-21 through 13-32 inclusive may be incorporated in the discovery order in the discretion of the judicial authority. Motions for discovery or disclosure of confidential records should not be filed unless the moving party has attempted unsuccessfully to obtain an appropriate release or agreement to disclose from the party or person whose records are being sought.

(e) If, subsequent to compliance with any filed request or order for discovery and prior to or during trial, a party discovers additional or new material or information previously requested and ordered subject to discovery or inspection, or discovers that the prior compliance was totally or partially incorrect or, though correct when made, is no longer true and the circumstances are such that a failure to amend the compliance is in substance a knowing concealment, that party shall promptly notify the other party, or the other party's attorney and file and serve in accordance with Sections 10-12 through 10-17 a supplemental or corrected compliance.

Credits
[Adopted June 24, 2002, effective January 1, 2003.]

Practice Book 1998, Sec. 34a-20, CT R SUPER CT JUV Sec. 34a-20
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Connecticut General Statutes Annotated
Rules for the Superior Court (Refs & Annos)
Procedure in Juvenile Matters
Chapter 34A. Pleadings, Motions and Discovery Neglected, Abused and Uncared for Children and Termination of Parental Rights

Practice Book 1998, Sec. 34a-21

Sec. 34a-21. Court-Ordered Evaluations

Effective: January 1, 2019
Currentness

(a) The judicial authority, after hearing on a motion for a court-ordered evaluation or after an agreement has been reached to conduct such an evaluation, may order a mental or physical examination of a child or youth. The judicial authority after hearing or after an agreement has been reached may also order a thorough physical or mental examination of a parent or guardian whose competency or ability to care for a child or youth is at issue.

(b) The judicial authority shall select and appoint an evaluator qualified to conduct such assessments, with the input of the parties. All expenses related to the court-ordered evaluations shall be the responsibility of the petitioner; however the party calling the evaluator to testify will bear the expenses of the evaluator related to testifying.

(c) At the time of appointment of any court appointed evaluator, counsel and a representative of the court shall complete the evaluation form and agree upon appropriate questions to be addressed by the evaluator and materials to be reviewed by the evaluator. If the parties cannot agree, the judicial authority shall decide the issue of appropriate questions to be addressed and materials to be reviewed by the evaluator. A representative of the court shall contact the evaluator and arrange for scheduling and for delivery of the referral package.

(d) Any party who wishes to alter, to update, to amend or to modify the initial terms of referral shall seek prior permission of the judicial authority. There shall be no ex parte communication with the evaluator by counsel prior to completion of the evaluation, except that the evaluator conducting a competency evaluation of a parent or guardian may have ex parte communication with said counsel of a parent or guardian prior to the completion of the competency evaluation.

(e) After the evaluation has been completed and filed with the court, counsel may communicate with the evaluator subject to the following terms and conditions:

(1) Counsel shall identify themselves as an attorney and the party she or he represents;

(2) Counsel shall advise the evaluator that with respect to any substantive inquiry into the evaluation or opinions contained therein, the evaluator has the right to have the interview take place in the presence of counsel of his/her choice, or in the presence of all counsel of record;

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(3) Counsel shall have a duty to disclose to other counsel the nature of any ex parte communication with the evaluator and whether it was substantive or procedural. The disclosure shall occur within a reasonable time after the communication and prior to the time of the evaluator's testimony;

(4) All counsel shall have the right to contact the evaluator and discuss procedural matters relating to the time and place of court hearings or evaluation sessions, the evaluator's willingness to voluntarily attend without subpoena, what records are requested, and the parameters of the proposed examination of the evaluator as a witness.

(f) Counsel for children, youths, parents or guardians may move the judicial authority for permission to disclose court records for an independent evaluation of their own client. Such evaluations shall be paid for by the moving party and shall not be required to be disclosed to the judicial authority or other parties, unless the requesting party, upon receipt of the evaluation report, declares an intention to introduce the evaluation report or call the evaluator as a witness at trial.

Credits

[Adopted June 24, 2002, effective January 1, 2003. Amended June 21, 2010, effective January 1, 2011; July 3, 2018, effective January 1, 2019.]

Notes of Decisions (1)

Practice Book 1998, Sec. 34a-21, CT R SUPER CT JUV Sec. 34a-21
Current with amendments received through July 15, 2023. Some rules may be more current, see credits for details.

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West's Louisiana Statutes Annotated
Louisiana Children's Code (Refs & Annos)
Title VI. Child in Need of Care (Refs & Annos)
Chapter 10. Special Motions and Discovery

LSA-Ch.C. Art. 651

Art. 651. Preadjudication motions; time for filing; hearings

Currentness

A. All motions prior to the adjudication hearing shall be made by written motion filed no later than fifteen days before any scheduled adjudication hearing. In the interest of justice, the court may allow additional time within which to make or file such motions or may permit such requests to be made by oral motion.

B. The motion shall state with particularity the grounds therefor and shall set forth the relief sought.

C. A motion may be granted without a contradictory hearing when mover is clearly entitled thereto without supporting proof. A motion shall not be denied without a contradictory hearing unless, assuming the facts alleged to be true, mover is not entitled to relief.

Credits
Added by Acts 1991, No. 235, § 6, eff. Jan. 1, 1992.

Editors' Notes

COMMENT--1991

The source of this article is C.J.P. Article 58, slightly reordered for clarification and easy reference. Under the former provision, the timing of this motion was tied to the appearance to answer, a stage in the proceedings which is now discretionary.

LSA-Ch.C. Art. 651, LA Ch.C. Art. 651
The Constitution, Revised Statutes Title 14, Code of Criminal Procedure, Code of Evidence and Children's Code are current through the 2023 First Extraordinary, Regular, and Veto Sessions. All other statutes and codes are current through the 2023 First Extraordinary Session.

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West's Louisiana Statutes Annotated
Louisiana Children's Code (Refs & Annos)
Title VI. Child in Need of Care (Refs & Annos)
Chapter 10. Special Motions and Discovery

LSA-Ch.C. Art. 652

Art. 652. Discovery

Effective: June 22, 2010
Currentness

A. At any stage of the proceeding, upon written motion of counsel for the child or his parent, the court may order the district attorney or the department to permit counsel to inspect:

(1) Reports of investigation in the possession or control of the district attorney or the department.

(2) Reports of evaluations or tests pertaining to the child in the possession or control of the district attorney or the department.

(3) The case records maintained by the department pertaining to the child and the parent, except information otherwise protected under R.S. 46:56 or by restrictive order pursuant to Article 653.

(4) Any videotape of a protected person made in compliance with Chapter 8 of Title III [1] which is in the possession or control of the district attorney.

B. The court shall order the district attorney or the department to permit counsel to inspect and copy any physical evidence, documents, or photographs which the state intends to offer into evidence at the adjudication hearing as provided for in Paragraph A(1), (2), and (4). However, the court may, in its discretion, permit the inspection of evidence provided for in Paragraph A(3).

C. At any stage of the proceeding, upon written motion of counsel for the child or his parent, the district attorney, or the department, and after a contradictory hearing and a showing of good cause, unless all parties agree, the court shall order the other party to permit counsel to obtain discovery not provided for in Paragraphs A and B of this Article regarding any matter, not privileged, including but not limited to attorney-client privilege or information not otherwise protected under R.S. 46:56 and 2124.1 or by restrictive order pursuant to Article 653, which is relevant to the subject matter involved in the adjudication hearing including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of a person having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

D. If counsel for the child or the parent is provided discovery, the court may condition that order upon reciprocal discovery by the state.

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E. (1) The court shall not order the production or inspection of any part of a writing that reflects the mental impressions, conclusions, or theories of an attorney, nor any other type of discovery except that expressly authorized by this Article.

(2) The court shall not order the production or inspection of any document or information which contains identifying information regarding a victim of domestic abuse or victim of dating violence as defined in R.S. 46:2132 or 2151, including physical or e-mail address, place of employment, telephone number, safety plan, or other protective measure or resource considered, implemented, planned, or accessed by the victim. The court shall not order the production or inspection of any document or information which discloses the location of a shelter or other facility which provides services to victims of domestic abuse or dating violence.

F. The duties imposed by a discovery order are continuing in nature as long as the child is subject to the jurisdiction of the court, unless the order provides to the contrary.

G. The party requesting discovery shall be responsible for reasonable copy costs associated with such discovery. Fees for copying shall be charged according to the uniform fee schedule adopted by the division of administration, as provided by R.S. 39:241, unless the child or parent is indigent, in which case no charge shall be made for such copies.

Credits

Added by Acts 1991, No. 235, § 6, eff. Jan. 1, 1992. Amended by Acts 1999, No. 449, § 1, eff. July 1, 1999; Acts 2004, No. 241, § 2; Acts 2010, No. 462, § 1, eff. June 22, 2010.

Editors' Notes

COMMENT--1991

The source of this article is C.J.P. Article 60. Employees of the Department of Social Services are included to bring this article into conformity with the jurisprudence. State in the Interest of Delcuze, 407 So.2d 707 (La.1981).

COMMENT--1999

Paragraph D clarifies the fact that other types of discovery permitted by the Code of Civil Procedure are not available in these juvenile court proceedings. See Ch.C. Art. 104(2).

Notes of Decisions (5)

Footnotes

1 Ch.C. art. 322 et seq.

LSA-Ch.C. Art. 652, LA Ch.C. Art. 652

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LSA-Ch.C. Art. 653

Art. 653. Restrictive orders; discovery

Currentness

A. The court may limit, modify, or restrict discovery upon written motion and a showing of good cause, such as a claim of confidentiality under R.S. 46:56. Such showing may be made ex parte if the interests of justice so require.

B. If the court restricts, limits, or modifies its order, the written motion showing good cause may be sealed and shall be placed in the record of the proceeding.

Credits
Added by Acts 1991, No. 235, § 6, eff. Jan. 1, 1992.

Editors' Notes

COMMENT--1991

The source of this article is C.J.P. Article 60(B). This new article separates out what are customarily called "protective orders" in order to highlight their availability and the court's duty to supervise the discovery process when claims of confidentiality arising from other statutes are at stake. Pennsylvania v. Ritchie, 480 U.S. 39, 107 S.Ct. 989 (1987).

Notes of Decisions (2)

LSA-Ch.C. Art. 653, LA Ch.C. Art. 653
The Constitution, Revised Statutes Title 14, Code of Criminal Procedure, Code of Evidence and Children's Code are current through the 2023 First Extraordinary, Regular, and Veto Sessions. All other statutes and codes are current through the 2023 First Extraordinary Session.

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LSA-Ch.C. Art. 654

Art. 654. Medical, sensory, psychological, and psychiatric examinations

Currentness

A. On its own motion, or on the motion of the child, the parent, or the petitioner, the court may order any child concerning whom a petition has been filed to be examined by a physician, optometrist, or audiologist.

B. On its own motion or on motion of the parent or the petitioner, after a contradictory hearing and a showing of good cause, the court may order any child alleged to be in need of care to be examined by a psychologist or a psychiatrist.

C. On the motion of the child, the court may order a child concerning whom a petition has been filed, to be examined by a psychologist or a psychiatrist.

D. Any examination as herein provided shall be made and the findings submitted to the court within thirty days of the date the order is entered. Such period may be extended by the court for good cause.

E. Copies of any reports of findings submitted to the court shall be available to counsel for all parties.

Credits
Added by Acts 1991, No. 235, § 6, eff. Jan. 1, 1992. Amended by Acts 1992, No. 705, § 1, eff. July 6, 1992.

Editors' Notes

COMMENT--1992

This amendment provides that these examinations may be sought by whichever representative of the state initiated the child in need of care proceeding. According to Article 631, a child in need of care petition may be filed by either the district attorney or the department.

LSA-Ch.C. Art. 654, LA Ch.C. Art. 654
The Constitution, Revised Statutes Title 14, Code of Criminal Procedure, Code of Evidence and Children's Code are current through the 2023 First Extraordinary, Regular, and Veto Sessions. All other statutes and codes are current through the 2023 First Extraordinary Session.

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LSA-Ch.C. Art. 655

Art. 655. Medical treatment of children; costs

Currentness

A. On its own motion, or on the motion of the child or the petitioner, the court may order the parent of a child concerning whom a petition has been filed to provide necessary medical or surgical care.

B. If the parent fails to provide such care, the court may, after due notice to the parent, order the care and order the parent to pay all or part of the expense.

Credits
Added by Acts 1991, No. 235, § 6, eff. Jan. 1, 1992. Amended by Acts 1992, No. 705, § 1, eff. July 6, 1992.

Editors' Notes

COMMENT--1992

This amendment to Paragraph A reflects the fact that the state's representative seeking needed medical treatment for a child may be either the district attorney or the department. According to Article 631, a child in need of care petition may be filed by either the district attorney or the department.

LSA-Ch.C. Art. 655, LA Ch.C. Art. 655
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LSA-Ch.C. Art. 655

Art. 655. Medical treatment of children; costs

Currentness

A. On its own motion, or on the motion of the child or the petitioner, the court may order the parent of a child concerning whom a petition has been filed to provide necessary medical or surgical care.

B. If the parent fails to provide such care, the court may, after due notice to the parent, order the care and order the parent to pay all or part of the expense.

Credits
Added by Acts 1991, No. 235, § 6, eff. Jan. 1, 1992. Amended by Acts 1992, No. 705, § 1, eff. July 6, 1992.

Editors' Notes

COMMENT--1992

This amendment to Paragraph A reflects the fact that the state's representative seeking needed medical treatment for a child may be either the district attorney or the department. According to Article 631, a child in need of care petition may be filed by either the district attorney or the department.

LSA-Ch.C. Art. 655, LA Ch.C. Art. 655
The Constitution, Revised Statutes Title 14, Code of Criminal Procedure, Code of Evidence and Children's Code are current through the 2023 First Extraordinary, Regular, and Veto Sessions. All other statutes and codes are current through the 2023 First Extraordinary Session.

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Title VI. Child in Need of Care (Refs & Annos)
Chapter 10. Special Motions and Discovery

LSA-Ch.C. Art. 656

Art. 656. Motions for severance

Currentness

On its own motion, or on the motion of the child, the parent, or the petitioner, if the petition also alleges that the child is a delinquent or that the family is in need of services, the court may, in the interest of justice, order separate adjudication hearings.

Credits
Added by Acts 1991, No. 235, § 6, eff. Jan. 1, 1992. Amended by Acts 1992, No. 705, § 1, eff. July 6, 1992.

Editors' Notes

COMMENT--1992

This amendment reflects the fact that the state's representative in a child in need of care proceeding may be either the district attorney or the department. See Art. 631.

LSA-Ch.C. Art. 656, LA Ch.C. Art. 656
The Constitution, Revised Statutes Title 14, Code of Criminal Procedure, Code of Evidence and Children's Code are current through the 2023 First Extraordinary, Regular, and Veto Sessions. All other statutes and codes are current through the 2023 First Extraordinary Session.

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West's Louisiana Statutes Annotated
Louisiana Children's Code (Refs & Annos)
Title VI. Child in Need of Care (Refs & Annos)
Chapter 10. Special Motions and Discovery

LSA-Ch.C. Art. 657

Art. 657. Motions to dismiss

Effective: August 1, 2022
Currentness

A. All objections to the proceedings, including objections based on defects in the petition and defenses capable of determination as a matter of law, may be raised by a motion to dismiss.

B. Upon a finding of grounds to dismiss the petition as provided in Paragraph A of this Article, the court shall order that the petition be dismissed.

Credits
Added by Acts 1991, No. 235, § 6, eff. Jan. 1, 1992. Amended by Acts 2022, No. 176, § 1.

Notes of Decisions (2)

LSA-Ch.C. Art. 657, LA Ch.C. Art. 657
The Constitution, Revised Statutes Title 14, Code of Criminal Procedure, Code of Evidence and Children's Code are current through the 2023 First Extraordinary, Regular, and Veto Sessions. All other statutes and codes are current through the 2023 First Extraordinary Session.

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LSA-Ch.C. Art. 658

Art. 658. Dismissal of petition

Effective: August 1, 2022
Currentness

The court shall dismiss a petition on the motion of the petitioner.

Credits
Added by Acts 1991, No. 235, § 6, eff. Jan. 1, 1992. Amended by Acts 1992, No. 705, § 1, eff. July 6, 1992; Acts 2022, No. 176, § 1.

Editors' Notes

COMMENT--1991

The source of this article is C.J.P. Article 66. Parents are permitted to file a motion to dismiss since they are the real parties in interest in these proceedings.

COMMENT--1992

This amendment reflects the fact that the state's representative in a child in need of care proceeding may be either the district attorney or the department. See Art. 631.

LSA-Ch.C. Art. 658, LA Ch.C. Art. 658
The Constitution, Revised Statutes Title 14, Code of Criminal Procedure, Code of Evidence and Children's Code are current through the 2023 First Extraordinary, Regular, and Veto Sessions. All other statutes and codes are current through the 2023 First Extraordinary Session.

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Massachusetts General Laws Annotated
Juvenile Court Rules for the Care and Protection of Children (Refs & Annos)
Juvenile Court Rules for the Care and Protection of Children

Juvenile Court Rule 13
Formerly cited as Juvenile Court Rule 9

Rule 13. Discovery

Currentness

Formerly cited as Juvenile Court Rule 9

A. Department or Licensed Placement Agency. In any care and protection case in which the Department or a licensed placement agency is or becomes a party, the Department or the licensed placement agency shall produce for each party a copy of its entire social services file, including reports made pursuant to G. L. c. 119, § 51A and § 51B, within sixty days from the date the case is commenced, or within sixty days from the date the Department or the licensed placement agency becomes a party, whichever is later. No party receiving material produced pursuant to this rule shall further duplicate or divulge the material to any person not a party to the case unless by order of court, except that counsel for a party may disclose the material to an expert retained by counsel. The expert shall not further duplicate or divulge the material and shall return the material to the counsel that retained him/her.

When producing a copy of its social services file in compliance with this rule, the Department or the licensed placement agency may withhold privileged material and work product of its attorney, and may withhold the names, and other reasonable, identifying data, of past or present foster parents of a child who is a subject of the case or of an adoptive parent or prospective adoptive parent of a child who is a subject of the case or of the reporter on reports made pursuant to G. L. c. 119, § 51A, subject to orders for further production.

The attorney for the Department or the licensed placement agency shall produce with the copy of the file a list of the materials and information withheld. The attorney for the Department or the licensed placement agency shall have an ongoing duty to produce for each other party on a timely basis any additions to the social services file made after initial production required in this subsection.

B. Other Discovery. Other discovery may be had only by court order on such terms as the court prescribes. A court order shall be requested by motion in accordance with Rule 7.

Credits
Adopted July 27, 2018, effective November 5, 2018.

Editors' Notes

NOTE
Section A. *See* Juvenile Court Standing Order 1-84, Juvenile Court Case Records and Reports.

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Juvenile Court Rule 13, MA R JUV CT Rule 13
Current with amendments received through July 15, 2023. Some rules may be more current; see credits for details.

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K. Copies of Court Documents

When a Montana attorney is associating with an out-of-state attorney who is appearing *pro hac vice* on a Montana case, orders/notices from the District Court will be delivered to in-state counsel only, with few exceptions.

Rule 6 - Specific Trial/Hearing Conduct

A. Unless otherwise ordered by the Court, plaintiffs/petitioners shall use numbers to identify their exhibits, and defendants/respondents shall use letters.

B. If a party is represented by more than one attorney, only one of the attorneys may question a specific witness.

C. If a party is represented by more than one attorney, and one of those attorney objects to a line of questioning, then only that objecting attorney may cross-examine the witness.

D. Attorneys must request permission of the Court to approach witnesses.

E. If a document is presented during trial/hearing, copies of the document must be presented to the judge and to opposing counsel.

F. Jury trials are normally scheduled to begin on Monday mornings at 9:00 a.m. All settlement negotiations should be completed by 4:00 p.m. the preceding Friday. Failure to comply with this rule may result in the imposition of sanctions in appropriate circumstances.

G. Attorneys/clients shall not keep the Court waiting but shall appear at the scheduled time ready to proceed.

Rule 7 - Dependent Neglect Cases

A. In abuse and neglect cases brought by the Montana Department of Health and Human Services (Department), counsel for the Department, at the time of the filing of a petition for any type of custody, shall provide to counsel for the parents, the GAL, and the CASA worker (if any) copies of all documents sought to be admitted into evidence at any hearing by the Department, including, but not limited to, all reports generated by third parties gathered by the Department in the course of its investigation and treatment of the family involved.

Counsel for each party will not disseminate without prior Court approval the discovery obtained from the Department or any excerpt, exhibit, or transcript prepared from these recordings to any person other than the following:

i. any attorney of record for the mother, father or youth;

ii. CASA/GAL assigned to the case;

iii. investigators and support staff for the counsel of each party;

iv. any expert retained to review the recordings; and

v. any person retained for the purpose of preparing an excerpt, exhibit, or transcript from the recordings.

B. Counsel for each party may show the discovery to the parties, but at all times counsel for the party or a paralegal shall be present. If counsel chooses to provide a copy to their parent client, it is counsel's obligation to redact confidential information. Counsel for the parties shall advise any above-listed person receiving the discovery that further dissemination, in *its broadest sense,* is strictly prohibited.

C. It shall be the responsibility of the attorneys of record in an action to employ, consistent with this local rule, reasonable measures to control the duplication of the access to, and the distribution of discovery. The parties will not be prohibited from using the discovery, at the hearings of this matter, to the extent otherwise permitted by law.

D. All DA, DD, DI, and DN matters shall be filed under seal. The respondent, the respondent's attorney, the county attorney, and all court personnel are allowed access to the DA, DD, DI, or DN files without specific authorization from the Court. Any other access to DA, DD, DI, or DN files will only be made with specific authorization from the Court.

E. Failure of any party to comply with the terms of this rule will subject themselves to punishment to the fullest extent of this Court's inherent authority as set out in Montana Code Annotated § 46-15-329.

N.R.S. 432B.513

432B.513. Provision of copy of report or information to parent or guardian and attorney before certain proceedings

Effective: October 1, 2017
Currentness

1. Except as otherwise provided in subsection 3, a person who submits a report or information to the court for consideration in a proceeding held pursuant to NRS 432B.466 to 432B.468, inclusive, or 432B.500 to 432B.590, inclusive, shall provide a copy of the report or information, to the extent that the data or information in the report or information is available pursuant to NRS 432B.290, to each parent or guardian of the child who is the subject of the proceeding and to the attorney of each parent or guardian not later than 72 hours before the proceeding.

2. If a person does not provide a copy of a report or information to a parent or guardian of a child and an attorney of the parent or guardian before a proceeding if required by subsection 1, the court or master:

(a) Shall provide the parent or guardian and the attorney of the parent or guardian an opportunity to review the report or information; and

(b) May grant a continuance of the proceeding until a later date that is agreed upon by all the parties to the proceeding if the parent or guardian or the attorney of the parent or guardian requests that the court grant the continuance so that the parent or guardian and the attorney of the parent or guardian may properly respond to the report or information.

3. If a child was delivered to a provider of emergency services pursuant to NRS 432B.630, a copy of a report or information described in subsection 1 need not be sent to the parent who delivered the child to the provider or the attorney of that parent pursuant to subsection 1.

4. As used in this section, “person” includes, without limitation, a government, governmental agency or political subdivision of a government.

Credits
Added by Laws 2001, c. 361, § 2, eff. July 1, 2001. Amended by Laws 2003, c. 103, § 14; Laws 2017, c. 152, § 3, eff. Oct. 1, 2017.

N. R. S. 432B.513, NV ST 432B.513

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Current through legislation of the 82nd Regular Session (2023) effective through July 1, 2023. Text subject to revision and classification by the Legislative Counsel Bureau.

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New Jersey Statutes Annotated
New Jersey Rules of Court
Part V. Rules Governing Practice in the Chancery Division, Family Part
Chapter II. Specific Civil Actions
Rule 5:12. Proceedings by Division of Child Protection and Permanency

R. 5:12-3

5:12-3. Discovery

Effective: September 1, 2021
Currentness

All relevant reports of the Division of Child Protection and Permanency and other reports of experts or other documents upon which the Division intends to rely shall be provided to the court, to counsel for all parties, and to any self-represented party on the first return date of the Order to Show Cause, if then available, or as soon as practicable after they become available. The Division's case file shall also be available for inspection to the attorneys for the parties without court order. All other discovery by any party shall be permitted only by leave of court for good cause shown.

Credits

Note: Source-R. (1969) 5:7A-3. Adopted December 20, 1983, to be effective December 31, 1983; amended June 28, 1996 to be effective September 1, 1996; amended July 9, 2013 to be effective September 1, 2013; amended July 30, 2021 to be effective September 1, 2021.

R. 5:12-3, NJ R CH DIV FAM PT R. 5:12-3
New Jersey rules are current with amendments received through July 1, 2023. Some rules may be more current; see credits for details.

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R. 5:12-4

5:12-4. Case Management Conference, Hearings, Trial, and Termination of Parental Rights Proceedings

Currentness

(a) Prompt Disposition; Case Management Conference; Adjournments. On the return date, the court shall proceed to hear the matter forthwith. In abuse and neglect cases, the court shall request that the parents or guardians at their first appearance in court provide identifying information regarding any persons who may serve as alternative placement resources to care for the children. As soon as the litigants have retained counsel or have chosen to proceed pro se and no later than 30 days from the return date, the court shall hold a case management conference or such other proceeding as may be appropriate, and shall enter any necessary order pertaining to the safety and well-being of the child and the conduct of the case, in the form prescribed by the Administrative Director of the Courts. Thereafter, the court may on its own motion or that of any party adjourn the matter from time to time as the interest of justice requires. The court may at any time enter such interim orders as the best interests of any child under its jurisdiction may require.

(b) Hearings in Private; Testimony of Child. Hearings and trials shall be conducted in private. In the child's best interests, the court may order that a child not be present at a hearing or trial unless the child's testimony is necessary for the determination of the matter. As to permanency hearings, however, the court shall accommodate the rights of the child as provided by N.J.S.A. 30:4C-61.2. The testimony of a child may, in the court's discretion, be taken privately in chambers or under such protective orders as the court may provide. A verbatim record shall be made of any in-chambers testimony or interview of a child.

(c) Examinations and Investigations. At any time during the pendency of the matter the court may order examinations and investigations pursuant to R. 5:3-3.

(d) Reports. The Division of Child Protection and Permanency (the “Division”) shall be permitted to submit into evidence, pursuant to N.J.R.E. 803(c)(6) and 801(d), reports by staff personnel or professional consultants. Conclusions drawn from the facts stated therein shall be treated as prima facie evidence, subject to rebuttal.

(e) Written Plan. Upon a finding of abuse or neglect the court may require that the Division of Child Protection and Permanency (the “Division”) file a written plan embodying the disposition terms proposed by the Division. When required to be filed, such plan shall be served upon all counsel or parties appearing pro se not less than 10 days prior to the dispositional hearing.

(f) Progress Reports. The court may, upon entry of an order of disposition, require that the Division of Child Protection and Permanency file with the court and serve upon all counsel or parties appearing pro se periodic progress reports at such intervals as the court shall require and covering such topics as the court shall designate.

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(g) Foreign State Placement. In any case in which the court orders or plans to order that a child be placed with a person or agency or institution in another State, the District of Columbia, or the U.S. Virgin Islands, it shall act in compliance with the Interstate Compact on the Placement of Children, as adopted in New Jersey, N.J.S.A. 9:23-5 et seq. (the Compact). The Administrative Director of the Courts, in coordination with the Commissioner of the Department of Children and Families, as the duly designated public authority responsible for compliance with the Compact, may establish such guidelines and procedures as are necessary to ensure that all actions subject to the Compact are in compliance therewith.

(h) Permanency Hearing. A permanency hearing shall be held to provide review and court approval of the placement plan for each child in placement outside of his or her own home no later than 12 months after the child goes into such placement, or no later than 30 days after the court makes a determination that reasonable efforts to reunify the child with the family are not required, whichever is sooner. Any hearing or proceeding scheduled before the court may serve as a permanency hearing, provided that notice of that fact is given to all parties in advance.

(i) Notice of Proceedings to Care Giver. The court shall ensure that the foster parent or other person currently providing residential care to the child is given notice of all hearings and other proceedings to be held pursuant to L. 1999, c. 53. Such notice shall be sent by regular mail or hand-delivered no later than two weeks before the date of the hearing or other proceeding, except in emergent circumstances. The notice shall be in writing and shall inform the foster parent or other person providing care for the child of the date, time, and location of the hearing or other proceeding, and that he or she has a right to appear at that time to make a statement to the court of his or her views regarding the case and the interests of the child. The notice shall further state that, in accordance with law, such person is not made a party to the case and that he or she may not be permitted to be present in the courtroom except for purposes of making a statement to the court. The court, or the child placement review board acting on behalf of the court in a matter before it, may provide notice to any other interested person for good cause in the interest of the child.

(j) Termination of Parental Rights Proceedings: Exhibits. The following procedures shall apply to every termination of parental rights matter filed by the Division of Child Protection and Permanency:

(1) The Division shall submit to the court no later than 5 days before the start of the trial two hard copies of all trial exhibits.

(2) The Division shall append to its trial exhibits a completed evidence list in a form prescribed by the Administrative Director of the Courts.

(3) If authorized by the court, the Division may submit to the court no later than 5 days before the start of the trial its exhibits in an electronic format prescribed by the Administrative Director of the Courts.

(4) In the event that no appeal is filed, the court shall retain exhibits for a minimum of 90 days after the entry of the final judgment. Upon the filing of an appeal, the court shall retain the exhibits until the final disposition of the appeal.

Credits

Note: Source-R. (1969) 5:7A-4. Adopted December 20, 1983, to be effective December 31, 1983; paragraphs (e) and (f) adopted November 5, 1986 to be effective January 1, 1987; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (b) amended June 28, 1996 to be effective September 1, 1996; paragraph (g) adopted July 10, 1998 to be effective September 1, 1998; new paragraphs (h) and (i) adopted July 5, 2000 to be effective September 5, 2000; paragraph

(a) amended July 28, 2004 to be effective September 1, 2004; note that Appendix X-A previously referenced in paragraph (a) also deleted July 28, 2004 to be effective September 1, 2004; paragraph (d) amended, and captions added to paragraphs (e), (f), and (g) June 15, 2007 to be effective September 1, 2007; paragraph (g) amended July 16, 2009 to be effective September 1, 2009; caption amended, new paragraph (j) adopted June 26, 2012 to be effective September 4, 2012; effective date of June 26, 2012 amendments changed to November 5, 2012 by order of August 20, 2012; paragraphs (d), (e), (f) and (j) amended July 9, 2013 to be effective September 1, 2013; paragraph (b) amended July 27, 2015 to be effective September 1, 2015.

R. 5:12-4, NJ R CH DIV FAM PT R. 5:12-4
New Jersey rules are current with amendments received through July 1, 2023. Some rules may be more current; see credits for details.

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McKinney's Consolidated Laws of New York Annotated
Family Court Act (Refs & Annos)
Article 10. Child Protective Proceedings (Refs & Annos)
Part 3. Preliminary Procedure

McKinney's Family Court Act § 1038

§ 1038. Records and discovery involving abuse and neglect

Effective: April 14, 2010
Currentness

(a) Each hospital and any other public or private agency having custody of any records, photographs or other evidence relating to abuse or neglect, upon the subpoena of the court, the corporation counsel, county attorney, district attorney, counsel for the child, or one of the parties to the proceeding, shall be required to send such records, photographs or evidence to the court for use in any proceeding relating to abuse or neglect under this article. Notwithstanding any other provision of law to the contrary, service of any such subpoena on a hospital may be made by certified mail, return receipt requested, to the director of the hospital. The court shall establish procedures for the receipt and safeguarding of such records.

(b) Pursuant to a demand made under rule three thousand one hundred twenty of the civil practice law and rules, a petitioner or social services official shall provide to a respondent or the child's attorney any records, photographs or other evidence demanded relevant to the proceeding, for inspection and photocopying. The petitioner or social services official may delete the identity of the persons who filed reports pursuant to section four hundred fifteen of the social services law, unless such petitioner or official intends to offer such reports into evidence at a hearing held pursuant to this article. The petitioner or social services official may move for a protective order to withhold records, photographs or evidence which will not be offered into evidence and the disclosure of which is likely to endanger the life or health of the child.

(c) A respondent or the child's attorney may move for an order directing that any child who is the subject of a proceeding under this article be made available for examination by a physician, psychologist or social worker selected by such party or the child's attorney. In determining the motion, the court shall consider the need of the respondent or child's attorney for such examination to assist in the preparation of the case and the potential harm to the child from the examination. Nothing in this section shall preclude the parties from agreeing upon a person to conduct such examination without court order.

Any examination or interview, other than a physical examination, of a child who is the subject of a proceeding under this article, for the purposes of offering expert testimony to a court regarding the sexual abuse of the child, as such term is defined by section one thousand twelve of this article, may, in the discretion of the court, be videotaped in its entirety with access to be provided to the court, the child's attorney and all parties. In determining whether such examination or interview should be videotaped, the court shall consider the effect of the videotaping on the reliability of the examination, the effect of the videotaping on the child and the needs of the parties, including the attorney for the child, for the videotape. Prior to admitting a videotape of an examination or interview into evidence, the person conducting such examination or the person operating the video camera shall submit to the court a verified statement confirming that such videotape is a complete and unaltered videographic record of such examination of the child. The proponent of entry of the videotape into evidence must establish that the potential prejudicial effect is substantially outweighed by the probative value of the videotape in assessing the reliability of the validator in court. Nothing in this section shall in any way affect the admissibility of such evidence in any other court proceeding. The chief administrator of the courts shall promulgate regulations protecting the confidentiality and security of such tapes, and regulating the access thereto, consistent with the provisions of this section.

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(d) Unless otherwise proscribed by this article, the provisions and limitations of article thirty-one of the civil practice law and rules shall apply to proceedings under this article. In determining any motion for a protective order, the court shall consider the need of the party for the discovery to assist in the preparation of the case and any potential harm to the child from the discovery. The court shall set a schedule for discovery to avoid unnecessary delay.

Credits

(Added L.1970, c. 962, § 9. Amended L.1989, c. 272, § 1; L.1989, c. 724, § 1; L.1990, c. 867, § 1; L.1991, c. 694, § 1; L.1992, c. 65, § 1; L.2010, c. 41, § 57, eff. April 14, 2010.)

Editors' Notes

SUPPLEMENTARY PRACTICE COMMENTARIES

by Prof. Merril Sobie

2020

Subdivision (b) incorporates the extensive discovery techniques authorized by CPLR Article 31 (see the 2014 Supplementary Commentary). Article 10 cases are accordingly treated as similar to other civil litigation proceedings, subject only to the child "endanger" clause which concludes the subdivision. Underscoring the broad discovery rights are the two Second Department related decisions of *Matter of Grover S. (Jonathan H.G.-Galt N.)*, 176 A.D.3d 828, 112 N.Y.S.3d 221 (2d Dept. 2019), and *Matter of Elliot P.W.G. (Anonymous) v. Jonathan H.G. (Anonymous)*, 181 A.D.3d 961, 121 NY.s.3d 312 (2d Dept. 2020), where the Appellate Division held that individuals who were non-parties could be deposed and ordered to produce records based on the fact that there was little risk of harm to the children (with the exception of certain records protected by Mental Hygiene Law Section 33.13).

2014

CPLR Article 31 prescribes the extraordinary broad array of discovery techniques available in civil litigation. Section 1038(d) stipulates, perhaps surprisingly, that the CPLR article is applicable to Article 10 proceedings, subject to the safeguard that "In determining any motion for a protective order, the court shall consider [in addition to CPLR prescribed restraints] the need of the party for the discovery to assist in the preparation of the case and any potential harm to the child from the discovery." In other words, the subdivision requires a balancing test, weighing the need for a specific discovery request and the potential harm to the child.

In *Matter of Dean T., Jr. (Dean T., Sr.)*, 117 A.D.3d 492, 985 N.Y.S.2d 518 (1st Dept. 2014), the respondent subpoenaed his child's mental health records in a case which revolved mainly around the credibility of the child (there existed no physical evidence of the abuse alleged in the petition). The Family Court's summary denial of the motion was reversed by the First Department. Citing 1038(d), the AD held that the court should have conducted an in camera inspection and applied the appropriate balancing test.

PRACTICE COMMENTARIES

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by Prof. Merril Sobie

Section 1038 grants the parties specific discovery rights. Included in the discovery menu is the right of the respondent or the child's attorney to move for an order directing that the child be examined by a physician, psychologist or social worker selected by the movant [§ 1038(c)]. The court must thereupon conduct a "balancing" test to determine the appropriateness of a subdivision (c) request; the motion may be granted or denied only after the statutory criteria have been considered.

Fast forwarding, Section 1112(a) permits an appeal from an Article 10 intermediate order. The Article 11 provision clearly applies to Section 1038; a 1038 order is by definition intermediate and may be appealed. However, a stay pending appeal is not automatic, and it is unlikely that the Family Court or the Appellate Division would grant a stay in the absence of a compelling justification. Hence the case usually proceeds and, given the time needed to perfect and argue an appeal, may reach disposition while the appeal is pending.

That scenario occurred in *Matter of Ameillia Rr. (Megan SS.)*, 95 A.D.3d 1525, 944 N.Y.S.2d 679 (3d Dept. 2012). In light of the fact that the Family Court case had concluded, the Third Department understandably dismissed the appeal as moot: "... the fact-finding and dispositional hearings have concluded and, thus, there is no proceeding pending in which this court might direct the requested examination of the child, were the mother to prevail". The appeal was moot, but the issue was not dead. As noted by the court, the respondent could appeal the final order and argue the Section 1038 determination as part of the non-interlocutory appeal.

Discovery may be vital in an Article 10 case, and counsel should not hesitate to take full advantage of his client's Section 1038 rights. Further, the denial of Section 1038 relief is appealable, although the appeal may be dismissed in the event the case has reached disposition. Child neglect and abuse cases frequently take many months or even years to reach disposition. Ergo, the best course may be to file an intermediate appeal and perfect as quickly as possible. Should the case reach disposition prior to the appeal, the appeal may be moot, but the issue is still alive (assuming an adverse final determination)-the same point can be incorporated in the "non-intermediate" appeal from the final dispositional order.

Notes of Decisions (60)

McKinney's Family Court Act § 1038, NY FAM CT § 1038
Current through L.2023, chapters 1 to 276. Some statute sections may be more current, see credits for details.

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West's Oregon Revised Statutes Annotated
Uniform Trial Court Rules
Chapter 11. Juvenile Court Proceedings

Uniform Trial Court Rules, UTCR 11.060

UTCR 11.060. Predisposition investigation

Currentness

(1) If an investigation report is prepared under ORS 419A.012, 419B.112(2)(a), and 419C.300, it shall be made available to the parties at least 7 days before the dispositional hearing, unless the parties stipulate to a shorter time.

(2) If jurisdiction is contested, the court shall not read the report until after jurisdiction has been established.

(3) If the investigation produces information which the Juvenile Department or other agency preparing the report concludes should not be divulged to the child, parents or counsel, that information must, on notice to the parties, be separated from the predisposition reports and must be divulged only pursuant to court order. If the court does not issue an order to divulge such information, the court shall set forth the reasons for its action.

Credits
[Effective August 1, 2000; amended effective August 1, 2006; August 1, 2015.]

Uniform Trial Court Rules, UTCR 11.060, OR R UNIF TRIAL CT UTCR 11.060
The Rules of Civil Procedure are current through laws of the 2023 Regular Session of the 82nd Legislative Assembly, which convened January 17, 2023 and adjourned sine die June 25, 2023, in effect through June 6, 2023, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. All other State Court Rules are current with amendments received through July 15, 2023. Some rules may be more current, see credits for details.

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West's Oregon Revised Statutes Annotated
Uniform Trial Court Rules
Chapter 11. Juvenile Court Proceedings

Uniform Trial Court Rules, UTCR 11.110

UTCR 11.110. Submission of exhibits

Currentness

(1) The trial court shall establish a process by supplementary local rule or presiding judge order by which all exhibits offered in juvenile cases will be submitted to the court.

(2) If the trial court requires counsel to submit exhibits through electronic filing under subsection (1), the following requirements apply:

(a) The court shall maintain an exhibit log for each hearing or trial listing each exhibit offered and whether or not it was received. The log shall be maintained in the record of the case.

(b) Each exhibit that is electronically filed must comply with the format requirements of UTCR 21.040. The filer shall provide the party role, hearing or trial date and exhibit number or numbers in the comment field. A party may comply with the requirement in UTCR 21.040(4) that certain information be contained in the document filed by including a cover page that provides the required information with each electronic filing of an exhibit or group of exhibits, if they are filed together.

(c) Exhibits shall be electronically filed on the day of the hearing or trial or by the end of the next judicial day.

Credits
[Adopted effective August 1, 2019.]

Uniform Trial Court Rules, UTCR 11.110, OR R UNIF TRIAL CT UTCR 11.110
The Rules of Civil Procedure are current through laws of the 2023 Regular Session of the 82nd Legislative Assembly, which convened January 17, 2023 and adjourned sine die June 25, 2023, in effect through June 6, 2023, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. All other State Court Rules are current with amendments received through July 15, 2023. Some rules may be more current, see credits for details.

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West's Oregon Revised Statutes Annotated
Oregon Local Court Rules
Crook/Jefferson Counties Local Rules
Chapter 11. Juvenile Court Proceedings

Crook Jefferson Counties Local Rules, Rule 11.095

Rule 11.095. Timelines for Discovery/Filing of Papers

Effective: February 1, 2023
Currentness

Unless good cause is shown:

(1) prior to or at the first appearance, parties must disclose initial available discoverable material. A party must also notify opposing counsel and disclose subsequent discoverable material within 48 hours of receipt. Both parties must complete discovery 24 hours before the pre-hearing conference;

(2) all motions must be filed in writing before the pre-hearing conference;

(3) motions will be considered waived if not filed timely; and

(4) all documents must be filed with the court at least one day prior to the hearing and show proof of concurrent service of true copies upon the other attorneys and unrepresented parties.

Credits
[Adopted effective February 1, 2021. Amended effective February 1, 2023.]

Crook Jefferson Counties Local Rules, Rule 11.095, OR R CROOK JEFFERSON Rule 11.095
Local court rules are current with amendments received through March 1, 2023. Some rules may be more current, see credits for details.

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West's Vermont Statutes Annotated
West's Vermont Court Rules
Rules for Family Proceedings

Vermont Family Proceedings Rule 2

RULE 2. CHILDREN IN NEED OF CARE OR SUPERVISION

Effective: June 20, 2022
Currentness

(a) Applicability of Rules to Juvenile Proceedings.

(1) *In General.* The Rules of Civil Procedure shall apply to all proceedings under Chapters 51 and 53 of Title 33 of the Vermont Statutes Annotated, except as otherwise provided in this rule. References to a complaint shall be deemed to be references to the petition filed under Chapter 53.

(2) *Rules Not Applicable.* The following Vermont Rules of Civil Procedure shall not apply in proceedings under this rule: Rules 2 (One Form of Action), 3 (Commencement), 3.1 (Waiver of Filing Fee and Service Costs), 4.1 (Attachment), 4.2 (Trustee Process), 4.3 (Arrest), 7(a) (Pleadings), 8 (Rules of Pleading), 9 (Pleading Special Matters), 10(b) and (c) (Form of Pleadings), 12(a) and (h) (When Defenses Presented; Waiver), 13 (Counterclaim and Cross-Claim), 14 (Third-Party Practice), 16.1 (Complex Actions), 17 (Parties), 19 (Joinder of Persons), 20 (Permissive Joinder), 21 (Misjoinder and Nonjoinder), 22 (Interpleader), 23 (Class Actions), 23.1 (Shareholder Derivative Actions), 23.2 (Unincorporated Associations), 25 (Substitution of Parties), 31 (Depositions Upon Written Questions), 38 and 39 (Trial by Jury), 40(a) and (b) (Calendar), 41(b)(1), (c) and (d) (Involuntary Dismissal on Court's Motion; Dismissal of Counterclaim; Costs), 45 (Subpoenas), 47, 48, 49 and 51 (Jurors; Jury Trials), 50 (Judgment As a Matter of Law in Actions Tried by a Jury; Alternative Motions for New Trial; Conditional Rulings), 53 (Masters), 54 (Judgment; Costs), 55 (Default), 56 (Summary Judgment), 57 (Declaratory Judgments), 62 (Stays), 64 (Replevin), 65 (Injunctions), 65.1 (Security), 66 (Receivers), 67 (Deposit In Court), 68 (Offer of Judgment), 69 (Execution), 70 (Judgment for Specific Acts), 72 (Probate Appeals), 73 (Small Claims Appeals), 74 and 75 (Appeals from Governmental Agencies), 79(b) (Judgment Book), 79.1 (Appearance and Withdrawal of Attorneys), 79.2 (Recording Court Proceedings), 80.1 (Mortgage Foreclosure), 80.2 (Naturalization), 80.4 (Habeas Corpus), 80.5 (Civil License Suspensions and DWI Penalties), 80.6 (Judicial Bureau Procedures), 80.7 (Immobilization or Forfeiture Procedures), 80.8 (Transfer from District Court), 80.9 (Municipal Parking Violations), and 80.10 (Stalking or Sexual Assault Orders), 81(a)-(c) (Applicability of Rules to Specified Actions; Terminology), 85 (Title), 86 (Effective Date).

(3) *Rules Modified.* The following Vermont Rules of Civil Procedure shall apply to the extent set forth in this paragraph: Rule 4 shall apply subject to 33 V.S.A. §§ 5311, 5312. Rule 7(b)(4) shall apply, but memoranda in opposition shall be filed within 7 days unless otherwise ordered by the court. Rule 12(b)-(g) shall be subject to subdivision (d) of this rule. Rules 15, 16 and 16.2 shall be subject to subdivision (d) of this rule. In addition, the pretrial conference shall be entitled a pretrial hearing, which shall be held within 14 days of the preliminary hearing; and, absent a showing of good cause, pretrial motions must be filed at or before the pretrial hearing. Rules 26-37 shall apply subject to subdivisions (d), (f) and (g) of this rule. Rule 40(c), (d) and (e) shall apply subject to subdivision (b) of this rule. Rule 43 shall apply subject to 33 V.S.A. § 5110. Rule 58 shall apply except that, although a judgment need not be set forth on a separate document, it is effective only when it is in writing, signed by the judge, and entered as provided in Rule 79(a). Vermont Rule of Criminal Procedure 17 shall govern the issuance of subpoenas.

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(b) Petition; Submission of Jurisdictional Facts; Scheduling.

(1) *Petition.* A proceeding under this rule shall be commenced by a petition as provided under Chapter 53 of Title 33 of the Vermont Statutes Annotated.

(2) *Submission of Jurisdictional Facts*. The party filing a petition pursuant to paragraph (1) of this subdivision shall supplement the petition with the information required by 15 V.S.A. § 1079(a) to the extent known to that party at that time. At the initial hearing the parents of the child and any other parties to the proceeding shall complete and submit an affidavit as to that information on a form to be provided by the clerk. At the hearing, the court may inquire as to any additional facts deemed necessary, and the parties shall answer under oath as provided in 15 V.S.A. § 1079(c). All parties have the continuing duty to supplement the information as provided in 15 V.S.A. § 1079(d).

(3) *Scheduling.* A petition under Chapter 53 of Title 33 of the Vermont Statutes Annotated, a motion under §§ 5113 or 5115 of Title 33, or any other motion if cause is shown for an expedited hearing, shall be set for hearing at the earliest possible time. A hearing on the merits of a petition, or a disposition hearing, shall be continued only for good cause shown and found by the court.

(c) Preliminary Hearing. At the temporary care hearing, or if no temporary care hearing is held, at or within a reasonable time after the filing of a petition, a preliminary hearing shall be held. Counsel shall be assigned at the temporary care hearing or prior to the preliminary hearing. Upon order of the court, a guardian ad litem other than a parent may be appointed for the child. If not assigned prior to the hearing, a guardian ad litem, shall be appointed for the child at the hearing. A party's denial shall be entered to the allegations of the petition unless that party enters an admission.

(d) Scheduling; Discovery.

(1) *Preliminary Hearing.* At the preliminary hearing, unless an admission from each party is accepted by the court, the court shall schedule a pretrial hearing or a hearing on the merits.

(2) *Discovery.* At the preliminary hearing on the request of a party or on the judge's own initiative the judge shall issue a discovery order. The order shall set forth dates by which each party shall file and respond to interrogatories, complete depositions, inspect or photocopy records of the Family Services Division of the Department for Children and Families, and:

(A) disclose to any other party the names and addresses of all witnesses known to have information relevant to the allegations of the petition;

(B) disclose to any other party the names and addresses of all witnesses whom the party intends to call as witnesses at any hearing and permit any other party to inspect and photocopy their relevant written or recorded statements within the party's possession or control;

(C) disclose to any other party and permit any other party to inspect, copy or photograph the following material or information within the party's possession, custody or control:

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(i) any reports or results, or testimony relative thereto, of physical or mental examinations or of scientific tests, experiments or comparisons, or any other reports or statements of experts which the party intends to use at any hearing;

(ii) any books, papers, documents, photographs (including motion pictures and video tapes), tangible objects, buildings or places or copies of portions thereof, which the party intends to use in any hearing.

(3) *Interrogatories.* Interrogatories shall not be allowed except on court order, where no other means of pretrial discovery is reasonably practical, and under such conditions as the court may impose, including limits on the number of questions and specifications as to who shall answer and the time in which to answer.

(4) *Scheduling of Pretrial Hearings and Motions Hearings.* The court shall schedule a pretrial hearing within 14 days of the temporary care or preliminary hearing. The court may schedule a motions hearing at any time.

(5) *Depositions.* Except as set forth in this rule, Vermont Rule of Civil Procedure 30 shall govern the taking of depositions. Depositions may be taken without leave of the court prior to the date set by the court at the preliminary hearing for completion of depositions, if a date was set, or if no date was set, the date of the pretrial hearing or merits hearing scheduled at the preliminary hearing. Notice of deposition may be oral or written, and need not be provided 14 days in advance of the deposition so long as reasonable notice is given, which in no case shall be less than 48 hours. However, no deposition shall be taken of a minor unless the court orders the deposition, under such conditions as the court may order, on the ground that the deposition would further the purposes of Chapter 53 of Title 33 of the Vermont Statutes Annotated.

(6) *Department for Children and Families Records*. Upon the filing of a petition, a party's attorney shall be permitted to inspect or photocopy all material or information within the possession, custody or control of the Family Services Division of the Department for Children and Families which relates to the child, the parent(s), the guardian(s), or which is otherwise relevant to the subject matter of the proceedings. However, any party or the department may promptly file a motion for a protective order pursuant to Vermont Rule of Civil Procedure 26(c), or an agent of the department may make an objection to disclosure of a specific record, and state the reasons for the objection, at the temporary care hearing or preliminary hearing.

(e) Pretrial Hearing.

(1) A pretrial hearing shall be held prior to the merits hearing.

(2) All parties shall attend each pretrial hearing, unless otherwise ordered by the court.

(f) Parties and Participants Not Specified By Statute.

(1) *Generally.* When the court determines that a person is a proper or necessary party pursuant to 33 V.S.A. § 5102(22)(F), but is not a party specifically listed in that section, the court may place limits on that person's participation and may condition participation upon prompt compliance with such discovery as the court specifies.

(2) *Notice to Caregivers.*

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(A) Notice of a permanency hearing held in connection with a proceeding under Chapter 53 of Title 33 of the Vermont Statutes Annotated on a petition alleging that a child is in need of care or supervision must be provided to the current caregiver of the child, including foster parents (if any) and any preadoptive parent or relative providing care for the child. The notice shall specify that the caregiver has a right to be heard at the hearing but that this notice and the right to be heard do not confer party status on a caregiver who does not otherwise have that status.

(B) If the child is in the custody of the Department for Children and Families, the Department shall give such notice by ordinary first-class mail, by personal delivery, or, if notice by those methods will not be timely, by telephone. If notice is given by telephone, a copy of the notice shall be mailed or delivered to the caregiver as soon as possible thereafter. If the child is not in the custody of the Department, notice by ordinary first-class mail shall be given by the court.

(C) If the caregiver does not appear at the hearing, the court shall inquire whether, and how, the caregiver was given notice. If the court finds that adequate notice was not given to the caregiver, the court shall continue the hearing until the agency or officer responsible for giving notice certifies to the court that such notice has been given.

(g) Discovery of Disposition Information.

(1) *Disposition Case Plans.* The disposition case plan made by the Commissioner for Children and Families pursuant to 33 V.S.A. § 5316 and any report of an expert witness shall be filed with the court and arrangements shall be made for their receipt by the guardian ad litem and attorneys of record seven days prior to the disposition hearing. Within the same time period, notice of the availability of each report, for reading at the court, shall be mailed to each party not represented by counsel. For good cause shown, the report of an expert witness may be filed and disclosed subsequent to this time period.

(2) *Other Information.* Discovery prior to the disposition hearing shall be as set forth in subdivision (d), above, except that written statements (other than those from expert witnesses) to be submitted to the court at the hearing shall be disclosed and made available to the parties for inspection and copying no later than the last business day prior to the hearing.

(h) Physical and Mental Examinations. Vermont Rule of Civil Procedure 35, except subdivision (b)(2), governs requests for physical and mental examinations. The judge shall select the person or persons by whom the examination is to be made, and the court's order shall include a date by which a report of the examination shall be filed with the court and served on the parties. No information acquired in the course of such examination shall be used, directly or indirectly, to incriminate the person being examined.

Credits

[Amended effective March 15, 1995 by 1993, Adj. Sess., No. 232, § 38. Amended effective September 1, 1996; January 27, 2000, effective May 1, 2000; November 26, 2002; June 1, 2007, effective June 22, 2007 December 17, 2008, effective January 1, 2009; June 11, 2013, effective August 12, 2013; September 20, 2017, effective January 1, 2018; March 8, 2021, effective May 12, 2021; April 18, 2022, effective June 20, 2022.]

Editors' Notes

REPORTER'S NOTES--2022 AMENDMENT

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Rule 2(a)(2) is amended to eliminate the reference to V.R.C.P. 78(a) (Motion Days), which was abrogated by order of June 7, effective August 9, 2021. Rule 2(a)(3) is amended to replace the reference to V.R.C.P. 78(b) with a reference to V.R.C.P. 7(b)(4) (Memorandum in Opposition), added by that order and embodying the provisions of former V.R.C.P. 78(b)(1) in revised form. See Reporter's Notes to 2021 amendment of V.R.C.P. 7(b) and abrogation of V.R.C.P. 78.

REPORTER'S NOTES--2021 AMENDMENT

Rule 2(a)(2) is amended for consistency with the recent amendment of V.R.C.P. 3.1 eliminating all reference to "in forma pauperis" and replacing it with "waiver of filing fee and service costs."

REPORTER'S NOTES--2018 AMENDMENTS

Rule 2 is amended to change its 15-and 10-day time periods to 14 days, consistent with the simultaneous "day is a day" amendments to V.R.C.P. 6, which adopts the day-is-a-day counting system from the Federal Rules. See Reporter's Notes to simultaneous amendments of V.R.F.P. 1.

REPORTER'S NOTES--2013 AMENDMENT

Rule 2(b)(2) is amended to substitute references to § 1079 of the Uniform Child Custody Jurisdiction and Enforcement Act, 15 V.S.A., ch. 20, adopted by Act 29 of 2011, § 1, for references to the similar provisions of § 1037 of the Uniform Child Custody Jurisdiction Act, former 15 V.S.A., ch. 19, repealed by Act 29 of 2011, § 8. Note that 15 V.S.A. § 1079(f) provides that "party" does not include a child in proceedings under 33 V.S.A. chs. 51 and 53.

REPORTER'S NOTES--2010 AMENDMENT

Emergency amendments to V.R.F.P. 1-3, 6, and 12 intended to implement 33 V.S.A. chapters 51-53 as enacted by Act 185 of 2007 (Adj. Sess.), effective January 1, 2009, were promulgated on December 17, 2008, effective January 1, 2009, with a direction that the Advisory Committee on Family Rules report on any comments received by September 30, 2009. No comments having been received, these amendments are now made permanent.

REPORTER'S NOTES--2009 EMERGENCY AMENDMENT

Rule 2 is amended on an emergency basis to incorporate in the rule changes made necessary by the enactment of Act No. 185 of 2007 (Adj. Sess.), which repealed 33 V.S.A. chapter 55 covering juvenile proceedings and replaced it with 33 V.S.A. chapters 51-53, effective January 1, 2009. Simultaneous amendments have been made to Rules 1, 3, 6, and 12. Most of the changes simply substitute references to appropriate sections of the newly enacted legislation. Other changes are briefly noted below.

The exception for delinquency proceedings in Rule 2(a)(1) has been deleted in light of the fact that delinquency and CHINS proceedings are now covered in separate chapters 52 and 53. Rule 2(a)(2) has been updated to incorporate recent deletions from or additions to the Vermont Rules of Civil Procedure. Rule 2(a)(3), is revised to reflect the substitution of the mandatory pretrial hearing for the status conference by virtue of 33 V.S.A. § 5313(a).

In Rule 2(c), "temporary care" has been substituted for "detention" to reflect new statutory terminology. See 33 V.S.A. § 5307. "Child" has been substituted for "juvenile," or added, in this subdivision and elsewhere for consistency with usage in the former and present statute. See 33 V.S.A. §§ 5102(2), 5112, 5312.

In Rule 2(d)(1), "party" has been substituted for "defendant," consistent with usage in the new statute. See 33 V.S.A. § 5102(22). In Rule 2(d)(2) and elsewhere, the Family Services Division of the Department for Children and Families has been substituted for the Department of Social and Rehabilitation Services, consistent with current law. See 33 V.S.A. §§ 302(2), 303. Rule 2(d)(4) has been amended to reflect the provisions of new 33 V.S.A. § 5313(a) noted above.

In Rule 2(e), references to the status conference have been deleted and references to the pretrial hearing now required by 33 V.S.A. § 5313(a) have been added. The substitution of "case plan" for "report" in Rule 2(g)(1) reflects the language of new 33 V.S.A. § 5316.

REPORTER'S NOTES--2008 AMENDMENT

Rule 2(f), promulgated as an emergency amendment by order of June 1, effective June 22, 2007, is now made permanent. See Reporter's Notes, 2007 Emergency Amendment.

REPORTER'S NOTES--2007 EMERGENCY AMENDMENT

Rule 2(f) is divided into two paragraphs and paragraph (2) is added to comply with amendments to the Social Security Act, 42 U.S.C. §§ 629h(b)(1), 675(5)(G), added by P.L. 109-239, § 8(a), (b), effective October 1, 2006. Rule 2(f)(2) requires notice of permanency hearings in connection with CHINS cases. It would also implement 33 V.S.A. § 5531(b). New Rule 1(f)(3) is adopted simultaneously to apply to permanency hearings in delinquency proceedings. The provisions of the two amendments are virtually identical. For an explanation of Rule 2(f)(2), see Reporter's Notes to Rule 1(f)(3).

REPORTER'S NOTES--2002 AMENDMENT

Rule 2(a)(3) is amended, simultaneously with the addition of Rules 4(a)(3) and 9(a)(3), to modify the effect of the July 1, 2002, amendment of V.R.C.P. 58 requiring each judgment to be set forth on a separate document. Such a practice in Family Court would impose undue burdens on clerks in light of the large numbers of orders that fall within the definition of V.R.C.P. 54(a) of a judgment as "a decree and any order from which an appeal lies." The amendment satisfies the underlying concern of amended V.R. C.P. 58 that there be a written order appropriately entered on the docket from which the time for appeal and other time periods may be calculated. See Reporter's Notes to that amendment. Under amended Rule 2(a)(3), the court may still make oral findings and conclusions, provided that the judgment is ultimately reduced to writing and entered as provided in the rule.

REPORTER'S NOTES--2000 AMENDMENT

Rule 2(a)(2) is amended to eliminate the provision making V.R.C.P. 42 inapplicable to CHINS proceedings under 33 V.S.A., Chapter 55. This change will make clear the authority of Family Court judges to order joint hearings or to consolidate proceedings under V.R.C.P. 42(a) in cases where common questions of law or fact are involved--for example, when proceedings involving siblings have been brought at different times under different docket numbers. The amendment reflects a practice that is frequently followed in Family Court without objection and extends to all contexts the requirement of 33 V.S.A. § 5531(a) for consolidation in dispositional reviews of siblings.

The amendment also makes V.R.C.P. 42(b) applicable in CHINS cases. Under this provision, the court may order separate trial of any claim or issue "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy."

Rule 2(b) is amended to reflect the statement in *In re B.C.*, _____ Vt. _____, _____, 726 A.2d 45, 53 (1999), where the Supreme Court noted that there was no provision in Rule 2 comparable to that in Rule 4(b)(1)(A) providing for the filing of the affidavit listing facts pertinent to jurisdiction as required by 15 V.S.A. § 1037, the Uniform Child Custody Jurisdiction Act. (Rule 4(d) requires such a filing by a defendant or any other party filing a responsive pleading.) The statute in fact requires such a filing by "each party" and, pursuant to 15 V.S.A. § 1031(3), covers custody issues in abuse and dependency proceedings, as well as in divorce. Because the statutory requirement applies to delinquency proceedings under Rule 1, as well as to CHINS proceedings under Rule 2, a simultaneous amendment has been made to Rule 1(b).

Jurisdictional information is critical at an early stage in a proceeding, because of the difficulty of undoing what the court has done in a complex matter when a jurisdictional problem arises later in the proceeding. The rule, however, reflects the reality that

the SRS worker at the critical and stressful early stages of a proceeding may not be able to determine and present the necessary information in a form that the state's attorney can use. Thus, an affidavit is not required to be filed with the petition. At the hearing, the parents, and any other person appearing who is "acting as a parent," defined in 15 V.S.A. § 1031(9), must file the statutory affidavit. This approach satisfies the statutory requirement that "each party" file an affidavit, relieves the state's attorney of the burden of determining facts known only to the parties, and provides the court with the necessary information.

REPORTER'S NOTES--1996 AMENDMENT

Rule 2(a)(2) is amended for consistency with the 1995 amendment of V.R.C.P. 50 and to reflect the simultaneous promulgation of Rule 15 covering appearance and withdrawal of attorneys in Family Court actions.

REPORTER'S NOTES

This rule is adopted together with Family Rules 1 and 3. The purposes of all three rules are set forth in the Reporter's Notes accompanying Family Rule 1. This rule provides the procedure for cases in which a child is alleged to be in need of care or supervision, a term defined in 33 V.S.A. § 5502(a)(12).

Subdivision (a)(1) makes applicable the Vermont Rules of Civil Procedure, except as otherwise provided in this rule.

The rule clarifies a confusing body of case law. In In re T.L.S., 139 Vt. 197, 425 A.2d 96 (1980), the Court held that the juvenile court lacks authority to order a psychiatric examination. The decision does not mention Vermont Rule of Criminal Procedure 54, which was in effect in 1980 and which purported to apply the Vermont Rules of Criminal Procedure to proceedings of the juvenile court; if applicable, V.R.Cr.P. 16.1 would have authorized such an examination. See In re M.W.R., 143 Vt. 6, 458 A.2d 1132 (1983) (holding that under Criminal Rule 54(a)(2) the criminal rules apply to neglect proceedings). Nor does the decision mention In re J.M., 131 Vt. 604, 313 A.2d 30 (1973), and In re R.H., 138 Vt. 425, 415 A.2d 1318 (1980), both of which applied the civil rules to neglect petitions in juvenile court. Civil Rule 35 would have authorized such an examination. Subsequent to the T.L.S. decision the Court squarely held that the civil rules apply, notwithstanding Criminal Rule 54(a)(2) and the M.W.R. precedent. In re J.R., 147 Vt. 7, 9 n. 1, 508 A.2d 719, 721 n. 1 (1986). The J.R. decision does not mention T.L.S.

The effect of J.R. is to reject both the argument that solely the statutes provide authority to the juvenile court (T.L.S.) and the argument that the criminal rules apply to neglect and other "chins" cases (M.W.R.). J.R. was later relied upon in In re R.M., 150 Vt. 59, 549 A.2d 1050 (1988). The rule codifies J.R. and R.M. The rule also modifies J.R. and R.M. by excluding or modifying certain of the civil rules.

Subdivision (a)(2) lists those civil rules which do not apply. The list includes rules with no relevance and rules which would operate at cross-purposes with the statute.

Subdivision (a)(3) sets forth the civil rules which are modified in their application to juvenile court. Civil Rule 4 applies but does not supersede 33 V.S.A. §§ 5519, 5520; the rule fills lacunae in the statute, such as providing a means of serving by publication.

Civil Rule 12(b)-(g) applies, subject to subdivision (d) of this rule. Subdivisions (b)-(h) of Rule 12 list seven defenses which may be raised before trial, and provide for various pretrial motions. Rule 12(a) requires that an answer be filed. Rule 12(h) specifically provides that if certain defenses are not raised by motion or answer, they are waived. The effect of applying subdivisions (b)-(g) but not subdivisions (a) and (h) is to remove the obligation of filing answers and pretrial motions in order to preserve certain defenses. Respondents are given the choice of raising the listed defenses before trial or during trial.

One of the purposes of these rules and the statute is to expeditiously respond to juvenile court petitions. It would frustrate this purpose were the parties forced to litigate issues under Civil Rule 12(a) and (h) before trial rather than prepare for the hearing on the merits.

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Civil Rules 15, 16 and 16.2, on amendment of pleadings, pretrial procedure and scheduling orders, are each made subject to subdivision (d) of this rule. Civil Rules 16 and 16.2 also are modified to provide that the civil rules' pretrial conference is to be called a status conference, the status conference may be held at any time set by the court, pretrial motions must be filed at or before the conference, and if no status conference is held pretrial motions shall be filed at or before the merits hearing or within 28 days of the preliminary hearing, whichever occurs first.

The deadline for filing motions is similar to the provisions governing delinquency matters, found in Family Court Rule 1(a)(3), except that in delinquency matters the motions addressed in Criminal Rule 12(b) generally must be filed before trial or they are waived. “Chins” proceedings and civil matters generally do not involve the types of motions listed in Criminal Rule 12(b). Even those defenses which the civil rules do require be raised pretrial (either by motion or by pleading), such as lack of jurisdiction over the person, are not required to be raised pretrial under Family Court Rule 2. They may be raised before trial, but they are not waived if they are raised for the first time at trial. See the discussion of the incorporation of Civil Rule 12, above.

Civil Rules 26-37, on discovery, are made subject to subdivisions (d), (f) and (g) of this rule. These provisions, discussed below, sharply limit the availability of certain types of civil discovery.

Civil Rule 40(c), (d) and (e), on continuances and disqualification, apply subject to the scheduling mandates of subdivision (b) of this rule. Civil Rule 43, on evidence and trial procedure, applies subject to the confidentiality provisions of the statute. Rule 78(b) applies but is amended so that memoranda in opposition to motions must be filed within 5 days unless otherwise ordered by the court.

Finally, Vermont Rule of Criminal Procedure 17 is incorporated by reference to provide the procedure for issuance of subpoenas. The civil rule on subpoenas, V.R.C.P. 45, does not apply.

Subdivisions (b) and (c) are almost identical to those in Family Rule 1 and are discussed in the Reporter's Notes to that rule. It should be noted that under subdivision (b)(2) of both rules if the juvenile matter is a merits hearing it cannot be delayed without good cause. Good cause does not include routine scheduling conflicts. See the Reporter's Notes to Rule 1.

Subdivision (d) governs scheduling and discovery. It is similar to Family Rule 1(d). Both are constructed to provide the juvenile court the authority it needs to ensure that merits hearings are convened and completed within a reasonable time frame. As with Rule 1(d), this rule requires the court, at the preliminary hearing, to issue an order setting the matter for a status conference or trial on the merits on a date certain.

This rule also authorizes the court to issue a discovery order, setting forth deadlines within which each party must comply with all discovery allowed by this rule. Although “chins” cases are not criminal, the discovery obligations imposed upon the state in criminal cases have been adopted and applied to all parties in addition to the usual modes of civil discovery. The emphasis is on rapid and consistently complete disclosure of materials listed in the rule, as opposed to the civil mode in which the parties themselves make requests which the court often must rule upon. The rule consists of a reiteration of the substance of the discovery obligations found in V.R.Cr.P. 16.

In those cases in which a discovery order is not issued, the parties will be expected to complete discovery prior to the status conference or merits hearing assigned at the detention hearing.

Subdivision (d)(3) prohibits interrogatories, except upon court order where no other means of discovery would be practical and under such conditions as the court may impose. Among the conditions listed are the time in which to answer, since the general civil time period, 30 days, would frustrate the purposes of this rule.

Subdivision (d)(4) authorizes the court to schedule a status conference at any time, whether or not a status conference was scheduled at the preliminary hearing and regardless of whether another status conference already has been held. Whenever the

first status conference is held, that date will be the deadline under (a)(3) for the filing of motions, unless good cause is shown. Subdivision (d)(3) also provides that the court may schedule hearings on motions at any time.

Subdivision (d)(5) governs depositions. Except as noted below, depositions may be taken without leave of the court. Ten days notice, required by the civil rules, is not needed so long as the notice provided is at least 48 hours and is reasonable. The notice may be oral or written.

Depositions do require leave of the court if sought to be taken after the date set by the court at the preliminary hearing for completion of depositions. If no date was set at the preliminary hearing, permission will be needed for any deposition to be taken after the date of the status conference or merits hearing scheduled at the preliminary hearing.

Depositions, however, are not allowed of all witnesses. The difficulty of scheduling depositions for busy lawyers as well as witnesses has been one of the major causes of delay in these proceedings. Depositions also may traumatize children who are being deposed. Compare V.R.Cr.P. 15(f)(2) (restricting depositions in criminal cases of children under age 16). The present rule strikes a balance between the needs of the parties and the needs of children by prohibiting the depositions of minor children absent a court order. The prohibition applies to witnesses who are children as well as victims who are children. The court should authorize the deposition of a minor child, according to the rule, only if the deposition would further the purposes of Chapter 55. See 33 V.S.A. § 5501 (setting forth purposes of Chapter 55).

Paragraph (6) of subdivision (d) is identical to the delinquency rule on S.R.S. records, except that protective orders should be filed under Civil Rule 26(c) rather than the criminal rules.

Subdivision (e) is identical to the same subdivision of Rule 1.

Subdivision (f) is similar to subdivision (f) of Rule 1. See Reporter's Notes--Family Court Rule 1. However, this subdivision applies only to the class of persons not specifically listed as parties in 33 V.S.A. § 5519 and yet found to be “proper or necessary” parties. See In re M.C.P., 153 Vt. 275, 303, 571 A.2d 627, 642 (1989) (brother of child). The rule allows the court to limit and control the extent of participation by such parties.

Subdivision (g), on disposition information, is identical to delinquency rule (g).

Subdivision (h) incorporates most of Civil Rule 35 on physical and mental examinations. The timing of requests for examinations should be addressed in the court's discovery order, if one is issued. The judge will rule upon the request, select the person or persons to make the examination, if any, and include a date by which a report must be filed and served. Because the facts of a “chins” case not infrequently could provide the basis for a criminal prosecution of an adult (and occasionally of another child), the rule creates a necessary, constitutional rule of exclusion: no communications obtained in the course of a court-ordered examination shall be used, directly or indirectly, to incriminate the person being examined. Information the state may wish to develop for a criminal prosecution must be developed according to the statutes and rules governing criminal cases, not by means of a “chins” proceeding.

Subdivision (b)(2) of Civil Rule 35 provides that when a person who had been the subject of an examination under Rule 35 requests and obtains a copy of the examining expert's report, or takes the deposition of an examining expert, that person is deemed to have waived “the physician-patient privilege as to the condition in question in its entirety.” Reporter's Notes, Rule 35--1975 Amendment. This is the federal rule. In juvenile court proceedings, this type of waiver often would render a patient's entire physical or mental health history an open book.

The purpose underlying adoption of this subdivision of Rule 2, authorizing mental and physical examinations, is to encourage use of expert testimony to assist the juvenile court in its decisionmaking without discouraging litigants and potential litigants

from seeking the help of therapists and physicians for treatment. Therefore, this subdivision of Rule 2 adopts Civil Rule 35 but explicitly deletes application of Civil Rule 35(b)(2).

Rules Fam. Proc. Rule 2, VT R FAM P Rule 2
State court rules are current with amendments received through July 15, 2023. Some rules may be more current; see credits for details.

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MEMORANDUM

TO: Judge Jerry N. Jones, Chair of the Colorado Civil Rules Committee

FROM: Subcommittee Re Gendered Pronouns

DATE: July 31, 2023

RE: Request for Guidance on Next Steps Re Gendered Pronouns

The Colorado Civil Rules Committee's Subcommittee Re Gendered Pronouns is at a point in our work where we would like to obtain your guidance on how best to proceed. The Subcommittee has arrived at the following two "best fix" approaches to accomplish the universal revision of all gendered pronouns currently set forth in the Colorado Rules of Civil Procedure:

FIRST APPROACH: FEDERAL RULES COMMITTEE APPROACH

The first approach generally tracks the fix adopted by the Federal Civil Rules Committee. Specifically, in referring to the generic term "party" they appear to default to "it." For example:

> Fed. R. Civ. P. 4(i)(4) *Extending Time.*
>
> The court must allow a *party* a reasonable time to cure *its* failure to:….
>
> Fed. R. Civ. P. 8(b)(1) *In General.*
>
> In responding to a pleading, a *party* must: (A) state in short and and plain terms *its* defenses to each claim asserted against *it*; and (B) admit or deny the allegation asserted against *it* by an opposing *party*.

When referring to less generic terms like "plaintiff" or "third-party plaintiff" they appear to use either "it" or to repeat the same less generic terms "plaintiff" and "third-party plaintiff," depending on which is most clear for the particular provision. For example:

> Fed. R. Civ. P. 4(a)(1)(E) *Contents.*
>
> A summons must…notify the *defendant* that a failure to appear and defend will result in a default judgment against the *defendant* for the relief demanded in the complaint;

Fed. R. Civ. P. 14(a)(1) *Timing of the Summons and Complaint.*

> A defending party may, as a *third-party plaintiff*, serve a summons and complaint on a nonparty who is or may be liable to *it* for all or part of the claim against *it*. But the *third-party plaintiff* must, by motion, obtain the court's leave if it files the third-party complaint more than 14 days after serving *its* original answer.

This first approach would afford the subcommittee some flexibility in revising the gendered pronouns rather than universally adopt the non-gendered catch all "it," for purposes of clarity. Here are a couple examples of how this first fix would apply to the Colorado Rules of Civil Procedure, showing the revision in redline format:

C.R.C.P. 14(a) *When Defendant May Bring in Third Party.*

> At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to ~~him~~it for all or part of the plaintiff's claim against ~~him~~it. The third-party plaintiff need not obtain leave to make the service if ~~he~~ it files the third-party complaint not later than 14 days after ~~he~~it serves his original answer. Otherwise ~~he~~the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make ~~his~~its defenses to the third party plaintiff's claim as provided in Rule 12 and ~~his~~ its counterclaim against the third-party plaintiff and cross claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert ~~his~~ its defenses as provided in Rule 12 and its~~his~~ counterclaim and cross claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this Rule against any person not a party to the action who is or may be liable to it~~him~~ for all or part of the claim made in the action against the third-party defendant.

C.R.C.P. 14(b) *When Plaintiff May Bring in Third Party.*

> When a counterclaim is asserted against a plaintiff, ~~he~~the plaintiff may cause a third party to be brought in under circumstances which under this Rule would entitle a defendant to do so.

C.R.C.P. 8(b) *Defenses; Forms of Denials*.

A party shall state in short and plain terms ~~his~~its defenses to each claim asserted and shall admit or deny the averments of the adverse party. If ~~he~~a party is without knowledge or information sufficient to form a belief as to the truth of an averment, ~~he~~it shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, ~~he~~the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, ~~he~~the pleader may make ~~his~~its denials as specific denials of designated averments or paragraphs, or ~~he~~the pleader may generally deny all the averments except such designated averments or paragraphs as ~~he~~it expressly admits; but, when ~~he~~the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, it~~he~~ may do so by general denial subject to the obligations set forth in Rule 11.

SECOND APPROACH: WA/MN RULES COMMITTEE APPROACH

The second approach generally tracks what the Civil Rules Committees of states like Washington and Minnesota have adopted. Generally, they do not use "it" or "its." Rather, when referring to less generic terms like "plaintiff" or "third-party plaintiff" they appear to repeat the same less generic terms "plaintiff" and "third-party plaintiff." For example:

Wash. CR 8(b). *Defenses; form of denials.*

A *party* shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the averments upon which the *adverse party* relies. If a *party* is without knowledge or information sufficient to form a belief as to the truth of an averment, the *party* shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a *pleader* intends in good faith to deny only a part or a qualification of an averment, the *pleader* shall specify so much of it as is true and material and shall deny only the remainder. Unless the *pleader* intends in good faith to controvert all the averments of the preceding pleading, the *pleader* may make denials as specific denials of designated averments or paragraphs, or the *pleader* may generally deny all the averments except such designated averments or paragraphs as the *pleader* expressly admits; but, when the *pleader* does so intend to controvert all its averments, the *pleader* may do so by general denial subject to the obligations set forth in rule 11.

Wash. CR 14(a)[1] *When defendant may bring in third party.*

At any time after commencement of the action a *defending party*, as a *third party plaintiff*, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the *defending party* for all or part of the *plaintiff 's* claim against the *defending party*. The *third party plaintiff* need not obtain leave to make the service if the *third party plaintiff* files the third party complaint not later than 10 days after the *third party plaintiff* serves an original answer. Otherwise the *third party plaintiff* must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third party complaint, hereinafter called the *third party defendant*, shall make defenses to the *third party plaintiff 's* claim as provided in rule 12 and ***his*** counterclaims against the *third party plaintiff* and cross claims against other *third party defendants* as provided in rule 13. The *third party defendant* may assert against the *plaintiff* any defenses which the *third party plaintiff* has to the *plaintiff 's* claim. The *third party defendant* may also assert any claim against the *plaintiff* arising out of the transaction or occurrence that is the subject matter of the *plaintiff 's* claim against the *third party plaintiff*. The *plaintiff* may assert any claim against the *third party defendant* arising out of the transaction or occurrence that is the subject matter of the *plaintiff 's* claim against the *third party plaintiff*, and the *third party defendant* thereupon shall assert defenses as provided in rule 12 and counterclaims and cross claims as provided in rule 13. Any party may move to strike the third party claim, or for its severance or separate trial. A *third party defendant* may proceed under this rule against any person not a party to the action who is or may be liable to the *third party defendant* for all or part of the claim made in the action against the *third party defendant*.

Minn. R. Civ. P. 8.02 *Defenses; Form of Denials.*

A *party* shall state in short and plain terms any defenses to each claim asserted and shall admit or deny the averments upon which the *adverse party* relies. If a *party* is without knowledge or information sufficient to form a belief as to the truth of an averment, the *party* shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. A *pleader* who intends in good faith to deny only a part or to qualify an averment shall specify so much of it as is true and material and shall deny only the remainder. Unless the *pleader* intends in good faith to controvert all the averments of the preceding pleading, the *pleader* may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the *pleader* expressly admits. However, a *pleader* who intends to

[1] The Subcommittee's assessment is that Rules such as 14 and 19 will be among the most challenging to revise. While this second approach results in some considerable verbosity in Rule 14, the approach is unlikely have the same result in the majority of the rules.

controvert all its averments may do so by general denial subject to the obligations set forth in Rule 11.

This second approach avoids the awkward, if not insensitive, use of "it" to refer back to people, but may perhaps be less clear and wordy. Here are a couple examples of how this second fix would apply to the Colorado Rules of Civil Procedure, showing the revision in redline format:

C.R.C.P. 14(a) *When Defendant May Bring in Third Party.*

At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to ~~him~~the defending party for all or part of the plaintiff's claim against ~~him~~the defending party. The third-party plaintiff need not obtain leave to make the service if ~~he~~the third-party plaintiff ~~-~~ files the third-party complaint not later than 14 days after ~~he~~the third-party plaintiff serves ~~his~~the third-party plaintiff's original answer. Otherwise ~~he~~the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall *make* ~~his~~ the third-party defendant's defenses to the third-party plaintiff's claim as provided in Rule 12 and ~~his~~ the third-party defendant's counterclaim against the third-party plaintiff and cross claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall *assert* ~~his~~ the third-party defendant's defenses as provided in Rule 12 and ~~his~~the third-party defendant's counterclaim and cross claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this Rule against any person not a party to the action who is or may be liable to ~~him~~the third-party defendant for all or part of the claim made in the action against the third-party defendant.

C.R.C.P. 14(b) *When Plaintiff May Bring in Third Party.*

When a counterclaim is asserted against a plaintiff, ~~he~~the plaintiff may cause a third party to be brought in under circumstances which under this Rule would entitle a defendant to do so.

C.R.C.P. 8(b) *Defenses; Forms of Denials*.

> A party shall state in short and plain terms ~~his~~the party's defenses to each claim asserted and shall admit or deny the averments of the adverse party. If ~~he~~a party is without knowledge or information sufficient to form a belief as to the truth of an averment, ~~he~~the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, ~~he~~the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, ~~he~~the pleader may make ~~his~~the pleader's denials as specific denials of designated averments or paragraphs, or ~~he~~the pleader may generally deny all the averments except such designated averments or paragraphs as ~~he~~the pleader expressly admits; but, when ~~he~~the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, ~~he~~the pleader may do so by general denial subject to the obligations set forth in Rule 11.

GUIDANCE REQUESTED

As between these two "best fix" options and the process moving forward, the Subcommittee would appreciate your direction as to the following:

1. Would you like the Subcommittee to first present these two "best fix" approaches through the foregoing summary examples to the broader Committee for their consideration and vote? After which vote, the Subcommittee would proceed to revise the entirety of the C.R.C.P. per the selected approach, and ultimately present to the Committee the fully revised set of the C.R.C.P. for their review and approval. This would essentially be a two vote / two meeting process.

2. Or, would you like the Subcommittee to select from the two "best fix" approaches (with input from you and others, if any, you deem important to include in that initial selection), and proceed to revise the entirety of the C.R.C.P., after which the Subcommittee would present to the Committee the fully revised set of the C.R.C.P. for their review and approval. This would essentially be a one vote / one meeting process.

3. Also, are other Committees considering similar revisions to other sets of Colorado rules or forms, in addition to the C.R.C.P.? If so, are other Committees following one of these approaches or a different approach? And before the Committee invests substantial effort in these revisions, should the Committee seek guidance as to whether any uniform standards will be articulated for revisions to court rules generally?