AGENDA
COLORADO SUPREME COURT
RULES OF JUVENILE PROCEDURE COMMITTEE

Friday, February 7, 2020, 9:00 AM
Supreme Court Conference Room 4th Floor
Ralph L. Carr Colorado Judicial Center
2 E. 14th Ave., Denver CO 80203
Supreme Court Conference Room

I. Call to Order

II. Chair's Report
A. Approval of the 10/4/19 meeting minutes

III. Old Business
A. Reviewing Current Rules
1. General Corrections to Set of Draft Rules (*see* attached excel sheet summarizing the issues raised by David and Trent in their emails and Attachments A & B)

IV. New Business
A. CASA in Rules?
B. JV E-filing: coming soon(ish)!

V. Adjourn
A. Next Meeting: April 24, 2020, 9:00 AM, Supreme Court Conference Room

Conference call information

To join the call please **dial 720-625-5050** and, when prompted, enter **participant code, 98806292#** (don't forget the pound sign).

Adobe Connect link

https://connect.courts.state.co.us/wallace/

Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of October 4, 2019 Meeting

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:30 AM in the Supreme Court Conference Room on the fourth floor of the Ralph L. Carr Colorado Judicial Center. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby, Chair	X	
David P. Ayraud		X
Magistrate Howard Bartlett		X
Jennifer Conn		X
Sheri Danz	X	
Traci Engdol-Fruhwirth	X	
Judge David Furman	X	
Melissa Thompson for Ruchi Kapoor	X	
Shana Kloek		X
Wendy Lewis	X	
Peg Long		X
Judge Ann Meinster	X	
Judge Dave Miller	X	
Chief Judge Mick O'Hara		X
Trent Palmer		X
Professor Colene Robinson	X	
Magistrate Fran Simonet		X
Judge Traci Slade	X	
Magistrate Kent S. Spangler	X	
John Thirkell		X
Pam Wakefield		X
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Attachments & Handouts:
(1) Rule 2.1 (appointment of counsel) new draft
(2) New Draft of Permanency Hearing Rule & Notice
(3) New Permanency Hearing Statute

(4) 2020 Meeting Schedule

II. Chair's Report

A. The 8/2/19 minutes were approved with one correction: on page 2, second paragraph from the bottom, "ORCP" should be "ORPC."
B. The chair is still working on forming an editing group.
C. The chair will reach out to Magistrate Timms, chair of the magistrate rules subcommittee (out of the civil rules committee) to offer a juvenile perspective on the magistrate rules. Justice Gabriel added that he is the liaison justice for the civil rules committee and, at the last civil rules meeting, he reminded the civil rules committee that they should reach out to the other rules committees in revising the magistrate rules.
D. The chair announced that, at the next meeting, the committee will take up issues raised as feedback to the whole rules document. If any other members have feedback, please get it to J.J. in the next couple of weeks to include in for the next meeting.

III. Old Business

A. Review of Present C.R.J.P
1. Rule 2.1 (appointment of counsel)

Ruchi Kapoor was out of town, so Melissa Thompson from ORPC attended the meeting in her place. In preparing for the meeting, she noted that, more and more, jurisdictions are using Family First (FFPSA) and DANSR funds, to authorize the appointment of counsel before a petition is filed. *See also* § 19-3-202, C.R.S. She wanted the committee's input as to whether the current version of the rule includes that scenario. The committee felt that adding a comment noting that nothing in the rule limits pre-petition appointment of counsel would address the issue. Sheri Danz added that the same is true for GALs, *see* section 19-3-203, C.R.S., so the comment included reference to GALs as well.

The committee also commented on the absence of procedures for advising respondents or appointing counsel for respondents who are in-custody. They automatically qualify for counsel, but some courts require them to fill out paperwork and send it in before appointing counsel. Other courts only require the incarcerated respondent to request counsel before appointing counsel. Some automatically appoint. Uniformity around the procedures for appointing counsel for incarcerated respondents may be beneficial and ORPC will suggest some language to address this.

Melissa also mentioned that, occasionally, ORPC has to substitute counsel for unusual reasons (death, suspension, contract expired, etc.) and the CJD authorizes ORPC to do so. Thus, today's version of the draft includes procedures for ORPC substitutions.

One committee member mentioned that RPC have more procedural avenues for appointment than other kinds of counsel. To offer more clarity, the committee suggested moving the reference to appointment by ORPC from (a)(1) to (b) (which is the more

specific section aimed at appointing counsel for respondents) and to add a comment that (b) does not supplant (a), but merely provides additional procedures.

The committee also amended (b)(3)(D) to substitute "Hearing" for "Leave of Court" to make it clear that the court must approve a substitution, but it can do it without a hearing. The timing of the court's order was also modified to start to run from the date of notification.

The committee also expressed general concern about all the rules and whether the committee has been specific enough or consistent enough in referencing the different kinds of attorneys that may be participating (and what the rules are calling them: GAL, attorney, counsel, respondent parent counsel, etc) and been consistent with any definitions already in section 19-1-103. Sheri volunteered to read the rules with an eye towards this issue. The possibility of a definition section in the front of the rules to specify the roles will be kept in mind.

2. Draft set of Rules-Feedback (from David Ayraud)
Tabled to next meeting to wait for more feedback.

IV. New Business

1. New Draft of Permanency Rule

Judge Meinster and Professor Robinson explained the updates made to the draft rule to conform to the amended permanency statute. Not much changed in the notice.

The committee suggested modifying (d)(2)(D) to reflect that children can direct the GAL not to share their wishes with the court.

The committee also discussed a perceived ambiguity in the statute as to whether section 19-3-702(4)(b)(I)–(II) applies only to OPPLA children or youths or to all children or youths. The committee believed from its context that it applies only to OPPLA children and youths.

The committee also considered how deferred adjudications fit within the amended statutory procedures for permanency and explained that the amendments did not change the statute's silence on permanency hearings for out-of-home children under deferred adjudications or informal adjustments (the permanency hearing is triggered by a disposition, which does not formally occur in a deferred adjudication or informal adjustment). Committee members felt the current comment [1] conflicted with the statute by requiring the court to have a permanency hearing within 3 months of the deferred adjudication or informal adjustment. Thus, the comment was amended noting that the statute doesn't trigger a permanency hearing for these children and advising the court to address permanency in the shortest time possible for these children.

Related to this issue, committee members realized that (h) of the Continued (Deferred) Adjudication Rule also conflicts with the permanency statute (this will be addressed at next meeting).

Committee members also related that the General Assembly is ramping up implementation of the Family First Prevention Services Act (FFPSA). Many committee members are involved in various discussions on this topic, and they anticipate changes coming down the pike that may need to be reflected in the rules. Anticipating this, Sheri Danz, Judge Meinster, Judge Furman, and Ruchi Kapoor volunteered to keep an eye on the issue. If a subcommittee is formed, the committee also recommended Jennifer Mullenbach,(Jeffco County Attorney) for the subcommittee.

2. 2020 Meeting Calendar

The 2020 meeting schedule was emailed on 10/3/2019. No one on the committee noticed any obvious conflicts at this time.

V. Adjourn Next Meeting December 6, 2019

The Committee adjourned at 10:50 AM.

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Respectfully Submitted,
J.J. Wallace

#	Rule	Issue	Page of 5/2019 draft set	Page of 1/2020 draft set	source	Proposal (if applicable)
1	Continued (Deferred) Adjudications	(h) conflicts with 19-3-702(1)(a) because a permanency hearing is triggered by (1) out of home placement and (2) "following the initial disposition" (and there is no dispo in a deferred adjudication	28	30	10/4/19 meeting	
1.1	Continued (Deferred) Adjudications	(f) bracketed "dismiss the case"	27	29	David's Email	take the brackets off
1.2	Continued (Deferred) Adjudications	The 3/15/19 Minutes indicate that the committee wanted the rule to set out procedures for (1) amending terms and conditions (is it adequately addressed by (d)?) and (2) procedures for a successful parent (does "dismiss the case" in (f) adequately address this or do we need a (4)-there's a placeholder	27-28	29-30	David's Email	
2	Authorizing the Filing of a Petition	two options of bracketed language	15	17	David's Email	David supports the second option (no additional evidence) to avoid mini adjudication hearings
3	Pre-trial Motions	(a)(1) has two options for duty to confer	16	18	David's Email	David supports the second option
3.1	Pre-trial Motions	(d) (service of motions) is empty	17	19	Trent's email	C.R.C.P. 5? Cross reference to Reports, Filings, and Other Pleadings, p. 17 & 19?
3.2	Pre-trial Motions	Should service of termination motions be treated differently?	17	19	Trent's email	Trent has concerns about providing notice of a termination motion to parents by giving it to their attorney. He feels notice of a termination motion should require more diligent efforts by the department or GAL to provide actual notice. *See* attachment A (excerpt of *People in Interest of M.M.*).

#	Rule	Issue	Page of 5/2019 draft set	Page of 1/2020 draft set	source	Proposal (if applicable)
3.3	Pre-trial Motions(a) & Responsive Pleadings and Motions(fg)		16 & 22	18 &24	Trent's email	Idea that the court "may" deem a motion abandoned doesn't really do anything. If the rule said "shall", one would know to respond. Otherwise, what purpose does this serve? No one would risk not responding, even if a motion has no legal authority, since that "may" be a confession.
4	Responsive Pleadings and Motions	Should this rule (1) apply only to adjudication procedures or (2) be the general rule for all motions and moved to the front	22	24	David's Email	
5	Trial By Jury-(d)Peremptory Challenges	From 3/14/19 minutes: The committee agreed that peremptory challenges should be allocated per aligned side and that each aligned side should get equal numbers of challenges. John Thirkell (with assistance from J.J. Wallace) will work on developing a draft rule incorporating the committee's ideas. See attached emails.	29	31	David's Email	*See* Attachment B. Further work? CRCP 47(h) ("Each side shall be entitled to four peremptory challenges")?
6	Form Release	Length of time release is active	39	43	David's email	6 months is too short and 2 years is more appropriate because the client can revoke
7	Discovery	(c) is titled "Persons Exempted from *Discovery and Disclosures* " and the last sentence says GALs are exempted from *discovery* (there's no reference to disclosures).	7-8	10	Trent's email	

#	Rule	Issue	Page of 5/2019 draft set	Page of 1/2020 draft set	source	Proposal (if applicable)
7.1	Disclosures	(f) requires disclosures "upon written request"	8	10	Trent's email	This has been discussed before and perhaps training RPC to put the request as a sentence on their entry of appearance adquately addresses the issue
8	Order to Interview or Examine Child	Is this an ex parte process? And/or should there be an opportunity to respond, especially in the instance where parents are represented?	13-14	15-16	Trent's email	
9	Temporary Custody	(c) Relative Affidavit and Advisement	14	16	Trent's email	These two rules' references to the relative affidavit seem inconsistent
9.1	Discovery	(e)(2) also relative affidavit	8	10	Trent's email	
10	Emergency Protection Orders	(d) doesn't say what happens if the Department *does not* file a motion to continue	15	17	Trent's email	
11	Adjudication on Non-Appearing or Non-Defending Respondent	(a)-"in person or through counsel" may be unclear because ORPC is often provisionally appointed and may appear, so technically a parent would appear through counsel even though they were not actually there	28	30	Trent's email	

Attachment A (Pre-trial Motions Service issue 3.3)

Excerpt from *People in Interest of M.M.*, 726 P.2d 1108, 1114–17 (Colo. 1986)

We first address C.M.'s claim that section 19–11–103(1), 8B C.R.S. (1986), violates *1115 due process of law, U.S. Const. amend. XIV; Colo. Const., art. II, sec. 25, by failing to require that a parent be served with a copy of the termination motion or that a parent at least be notified of its filing. We reject C.M.'s constitutional challenge.

Section 19–11–103(1) provides as follows:

> Termination of a parent-child legal relationship shall be considered only after the filing of a written motion alleging the factual grounds for termination, and termination of a parent-child legal relationship shall be considered at a separate hearing following an adjudication of a child as dependent or neglected. *Such motion shall be filed at least thirty days before such hearing.* (emphasis added).

Although section 19–11–103(1) contains no express requirement that a parent be served with a termination motion or be otherwise notified of its filing, due process requires that a parent be provided with adequate notice of a termination hearing and an opportunity to protect her interests at the hearing itself. *People In the Interest of E.A.*, 638 P.2d 278 (Colo.1982); *Robinson v. People*, 173 Colo. 113, 476 P.2d 262 (1970). C.M. was entitled to adequate notice that the department was seeking termination of her parental rights and that a termination hearing would be held on a certain date. The fact that a parent is entitled to notice, however, does not mean that statutory silence on the issue of notice is itself a constitutional infirmity.

The record here clearly shows that as of June 14, 1984, both C.M. and her attorney were expressly advised by the court that a termination hearing was set for October 24, 1984, thereby providing them with more than four months in which to prepare for the hearing. The factual grounds for the termination motion were set out in the motion itself, which was served on C.M.'s counsel on October 2, approximately three weeks prior to the termination hearing. Moreover, from January 1983 through June 1984, C.M. and her attorney were involved in various hearings related to the dependency of M.M. and the treatment plan for C.M., all of which provided C.M. with explicit information about her parental inadequacies and the real risk that her parental rights would be terminated in the event those inadequacies were not effectively remedied. Finally, the record unequivocally establishes that C.M. was afforded a full opportunity to be heard at the termination hearing and to present evidence in contravention of the department's motion. Under these circumstances,

we are satisfied that C.M. was accorded due process of law in the termination proceedings.[4]

III.

We next consider C.M.'s claim that the department's failure to serve a copy of the termination motion within forty-eight hours after filing such motion violated Rule 5(d) of the Colorado Rules of Civil Procedure and thereby rendered the termination order invalid. We conclude that the department was required to comply with C.R.C.P. 5(d) and failed to do so, but that its failure to comply was harmless error.

C.R.C.P. 5(d) states:

> In all cases where these rules do not expressly require the filing and service of a paper, subsequent to the original complaint, and the filing of a paper alone is provided for, a copy of such paper so filed shall be served upon the adverse party either prior to such filing, or within forty-eight hours thereafter, and where the service alone of any paper is required it shall be filed either before service or within a reasonable time thereafter.

It might be argued that Rule 5(d) has no application to this case because *1116 Rule 6(b) of the Colorado Rules of Juvenile Procedure, which section 19–1–107(1), 8B C.R.S. (1986), makes expressly applicable to a proceeding for the termination of parental rights, requires that once jurisdiction has been acquired over the parties any "subsequent pleadings and notice may be served on such parties by regular mail" but contains no specific time period within which service must be accomplished. We believe, however, that C.R.C.P. 5(d) does apply to a motion to terminate parental rights.

A proceeding to terminate parental rights is a civil proceeding, *People in the Interest of C.A.K.*, 652 P.2d 603 (Colo.1982), and Rule 1 of the Colorado Rules of Juvenile Procedure states that the Colorado Rules of Civil Procedure shall apply to a juvenile proceeding not expressly governed by the juvenile rules or the Colorado Children's Code. Since Rule 6 of the Colorado Rules of Juvenile Procedure contains no time period for effectuating service, it is appropriate to ask whether a motion for termination of parental rights is subject to the provisions of C.R.C.P. 5.

The specific question thus becomes whether a motion to terminate parental rights is a "paper" within the purview of Rule 5(d) of the Colorado Rules of Civil Procedure. While the word "paper" in Rule 5(d) might be considered a reference to those documents described in Rule 5(a) as "every paper relating to discovery,"[5] we believe such an interpretation would contravene the overriding purpose intended by Rule 5(d), which is to advise an adverse party of any action taken by an opposing party in pending litigation.[6] This purpose is accomplished by requiring a

party who files a paper to serve a copy of such paper on the adverse party not later than forty-eight hours after the filing. Pursuant to Rule 5(b), "[s]ervice by mail is complete upon mailing."

In light of the fact that Rule 6(b) of the Colorado Rules of Juvenile Procedure is silent on the time period within which a motion to terminate parental rights should be served on the natural parent, and considering the significance of the filing of such a motion to the natural parent, we believe it appropriate to apply the service requirements of C.R.C.P. 5(d) to a motion for termination of parental rights. We conclude, therefore, that C.M. was entitled *1117 to be served with a copy of the termination motion within forty-eight hours of its filing on September 21, 1984.

Although the record does not show when the department placed the motion for termination in the mail for service on C.M., the late receipt of the motion by C.M.'s attorney on October 2, 1984, is rather persuasive evidence that the department failed to mail the motion within forty-eight hours of its filing. We accordingly assume, for purposes of this appeal, that the department did not comply with C.R.C.P. 5(d). Although the department should have taken steps to ensure that C.M. received notice of the termination motion sooner than October 2, 1984, we are satisfied that the department's noncompliance with C.R.C.P. 5(d) did not affect the validity of the order of termination. C.M. was made aware at the review hearing on June 14, 1984, at which both she and her attorney were present, that the department intended to file a motion to terminate parental rights and that the termination hearing was being set for October 24, 1984. Moreover, C.M. was served with the motion for termination on October 2, 1984, twenty-two days prior to the hearing itself. Under these circumstances, the department's failure to comply with the forty-eight hour service requirement of C.R.C.P. 5(d) did not affect the substantial rights of C.M. and must accordingly be deemed harmless error.

Footnotes:

4 Although we find no constitutional violation in this case, we express our disapproval of the department's delayed filing of the motion for termination and the belated service of the motion on C.M.'s attorney. Since the department knew on June 14, 1984, that the termination hearing had been set for October of that year, it had no legitimate reason for putting off the filing of the motion until thirty-three days before the hearing. Furthermore, once the motion was filed, it should have been promptly served, as we discuss in Part III of the opinion.

5 C.R.C.P. 5(a) states:

Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written **notice**, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

6 To interpret the term "paper" in C.R.C.P. 5(d) to refer only to papers "relating to discovery" in C.R.C.P. 5(a) would result in reading the phrase "and similar paper" out of C.R.C.P. 5(a). Fed.R.Civ.P. 5(a) is virtually identical to C.R.C.P. 5(a). In the context of Fed.R.Civ.P. 5(a), inclusion of the phrase "and similar paper" was "an attempt by the draftsmen to avoid a restrictive interpretation on the rule's specific list of papers, which is not intended to be exhaustive." C. Wright and A. Miller, *Federal Practice and Procedure: Civil* § 1143, at 577 (1969 and 1985 Supp.); *see also* 2 J. Moore and J. Lucas, *Moore's Federal Practice* ¶ 5.04, at 5–16 to 5–17 (2d ed. 1986). Significantly, the phrase "every paper relating to discovery required to be served upon a party unless the court orders otherwise" was added after the original adoption of Fed.R.Civ.P. 5(a) in order to make it clear that such discovery papers were included within the language of the rule. *See* C. Wright and A. Miller, *supra,* at 578–79; J. Moore and J. Lucas, *supra,* at 5–14 to 5–15. It is clear, therefore, that at least in the context of Fed.R.Civ.P. 5(a), "paper" is not limited to discovery papers. The term "paper" encompasses those types of paper listed as well as "similar paper." C. Wright and A. Miller, *supra,* at 575–76. Examples of situations to which C.R.C.P. 5(d) applies include the filing of an answer under C.R.C.P. 12(a), which makes no provision for service, and the filing of a motion for post-trial relief under C.R.C.P. 59(b), which again simply provides for the filing of the motion without reference to service. *See* R. Hardaway and S. Hyatt, Colorado Civil Rules Annot. § 5.5, at 35 (1985).

Attachment B (Peremptory Challenges issue 5)

From: John Thirkell
Subject: Peremptory Challenges in Dependency and Neglect Adjudicatory Jury Trial

Good Morning JJ and Judge Miller,

I have been thinking about this issue this week.

Any structure is arbitrary in terms of number and apportionment, so it strikes me the basic consideration is Due Process and fairness.

In most cases I've experienced, though not always, the Guardian ad Litem is aligned with the Department.

There is no one mathematical formula to solve how many Respondent Fathers there are in a case, generally some where between one to three.

There are physical limitations in some jurisdictions to court room size and how many seats there are in the jury box, though I suppose folding chairs or movable chairs may be present nearly everywhere.

Some flexibility may be needed for any general rule.

With those thoughts in mind I suggest that the Juvenile Rule regarding peremptory challenges in dependency and neglect cases combine the following features:

1. The Court may allow all of the parties combined in a dependency and neglect adjudicatory jury trial up to twelve total peremptory challenges.
2. As a pre-trial issue, all parties participating in the adjudicatory jury trial will submit there request as to the total number and proposed apportionment of the total number of peremptory challenges authorized by the Court for that trial and the Court will determine that issue and make the decision known before the jury selection process commences.
3. As a general rule, the Respondent Parents combined should have half of the total number of peremptory challenges.
4. As a general rule, aligned parties (those advocating for adjudication contrasted with those opposed to adjudication) shall each have half of the peremptory challenges allowed.
5. As a general rule, each aligned party in the same class of party type, for example, the two Respondent parents, will each have an equal number of peremptory challenges.
6. If the Court varies from the stated general rules stated herein, the Court shall make specific findings prior to the commencement of the jury selection process as to how the specific apportionment of peremptory challenges determined by the court better promotes fairness than the application of the general rules contained herein.

From: wallace, jennifer
This is getting complicated. I've been reading about peremptory challenges and thinking about the issue. See this article arguing that peremptory challenges should be

abolished: https://chicagounbound.uchicago.edu/uclrev/vol64/iss3/2/.

Do you want to get together to discuss? David Ayraud also volunteered his subcommittee to help.

The number 12 scared me because that's more than we have now (and I'm not sure the committee would go for increasing the number-it seemed like they wanted it to keep it at present number or lower).

wallace, jennifer

From: David Ayraud
Sent: Monday, September 30, 2019 9:51 AM
To: wallace, jennifer
Subject: Re: Juvenile Rules Meeting Next Friday, 10/4 at 9:30

J.J.,

I will be out of town on Friday, but thought I would send in comments.

#2 P. 15 of the draft rules, Authorizing the Filing of a Petition - I support the last bracket "No additional evidence or argument shall be presented to the court prior to making this determination." Allowing a hearing to be held, even if it's solely at the court's discretion would likely result in "mini-adjudication hearings".

#3 P. 16 - Pre-Trial Motions (a)(1), I support the second conferral option.

#4 P. 22 - Responsive Pleadings and Motions - I realize we drafted this before most of the other sections were done. We seem to have made very general rules pertaining to motions instead of only focusing on motions related to the adjudicatory hearing. Are we ok with this or do we feel we need to move these "motion" rules to a more general section?

#1.1 P. 27 - Continued (Deferred) Adjudications (f) - yes I agree the bracketed "dismiss the case" should be included.

#1.2 P. 28 - 3/15/19 Minutes indicate that the committee wants 1) procedures to amend the terms and conditions (appears to be addressed on P.27 subsection (d), 2) procedure for when Respondent succeeds (does the added information in the bracket on P.27, subsection (f) accomplish this)? If the committee wants a new (4) to specifically address dismissal, I can draft something.

#5 P.29 - peremptory challenges - looks like J.J. and John were going to propose language. I am happy to have the adjudicatory sub-committee address this if it's easier.

#6 P.39 - I know we discussed the length of time for a release, but I'll just raise the concern that 6 months is very short. Given that statutory timelines are approximately 12 months for permanency, there could be complications if the release is shorter than the case length. I believe 2 years is most appropriate especially since clients can revoke.

Thanks,

David

David Ayraud
Senior County Attorney

County Attorney's Office

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wallace, jennifer

From: William Trent Palmer
Sent: Thursday, January 30, 2020 5:27 PM
To: wallace, jennifer; Ruchi Kapoor
Subject: Re: Reminder: Juv. Rules Meeting 2/7-Feeback

J.J. & Ruchi, I doubt I can attend the 2/7 meeting due to a scheduled criminal motions hearing. However, I read through the draft rules and here are some thoughts:

#7
- Discovery sub. (c); is the GAL exempted from disclosures *and* discovery, or just discovery?

#7.1
- Discovery sub. (f); I still don't like the *upon written request* language and would prefer the Department's disclosures be automatic. In any event, I suppose it will suffice to add a line to entries of appearance or make some other standalone request in every case

#8
- Order to Interview or Examine Child; is this an *ex parte* process? And/or should there be an opportunity to respond, especially in the instance where parents are represented?

#9 & 9.1
- Re. Relative Affidavits: Descriptions of timing in Temporary Custody sub. (c) and Discovery sub. (e) seem inconsistent

#10
- Emergency Protection Order section doesn't say what happens if the Department *does not* file motion to continue

#3.1 & 3.2
- Pre-Trial Motions, there is nothing under sub. (d) re. Service
    - I also have serious concerns about effecting *Notice* of a motion to terminate on a parent simply by giving it to their attorney. This may work for "service" of other, non-substantive motions after the Petition stage, but notice that a termination trial is pending seems like it should require more diligent efforts by the Department or the GAL to provide *actual notice*. See *M.M.*

#3.3
- See Pretrial Motions sub. (a) *and* Responsive Pleadings and Motions sub. (f). Idea that the court "may" deem a motion abandoned doesn't really do anything. If the rule said "shall", one would know not to respond. Otherwise, what purpose does this serve? No one would risk not responding, even if a motion has no legal authority, since that "may" be a confession

- Adjudication on Non-Appearing or Non-Defending Respondent sub. (a). I'm not clear what 'in person or through counsel' means here. Often ORPC is provisionally appointed and may appear, so technically a parent would appear through counsel even though they weren't actually there

Hope this is useful. See y'all soon,

Trent

WTP | LAW
970.923.9915

wallace, jennifer

From: Peg Long
Sent: Tuesday, October 1, 2019 2:01 PM
To: wallace, jennifer
Subject: Friday's Discussion of CRS 19-3-702
Attachments: CASA Appointments After HB 19-1219.docx

Hi Jennifer,
I have attached a document that I believe accurately summarizes the viewpoint of Colorado CASA and the local programs with respect to changes in the Juvenile Rules that may result from adoption of HB 19-1219, which repeals, reenacts and amends C.R.S. 19-3-702 and modifies the permanency planning process. Please share this information with committee members in whatever fashion you deem best. Please also extend my apologies to the group for my absence and inability to address any questions that may arise on Friday regarding this perspective.

Thank you for the opportunity to provide this input and for your strong and knowledgeable support of the Juvenile Rules Committee.

Sincerely
Peg

CASA Appointments After HB 19-1219

- The Court Appointed Special Advocate (CASA) program was created to allow judges and magistrates to appoint highly trained, qualified community volunteers when, in her or his opinion, "a child who may be affected by such [court] requires services that a CASA volunteer can provide" (CRS § 19-1-206 (1)) and to "enhance the quality of representation of children" (CRS § 19-1-201 (2)) in cases brought under C.R.S. Titles 19, 14 or 15. (CRS § 19-1-206 (1))
- The chief judge of a judicial district and the local CASA program may enter into a Memorandum of Understanding, which identifies the roles and responsibilities of an appointed CASA volunteer. (CRS § 19-1-202(1))
- There are currently 18 local CASA programs, serving children in all state judicial districts except for the 3rd, 12th, 13th and 15th judicial districts.
- "A CASA volunteer shall be appointed at the earliest stages of an action pursuant to a court order that gives him or her the authority to review all relevant documents and interview all parties involved in the case, including parents, other parties in interest, and any other persons having significant information relating to the child." (CRS § 19-1-206 (2))
- House Bill 19-1219 repeals, reenacts and amends CRS §19-3-702 to support an expedited permanency planning process. The early appointment of a CASA advocate is critical to the thoroughness and success of an expedited process.
- It would be helpful to all parties, the court, and especially the child(ren) listed on the petition, to have the CASA appointment occur as early in the filing as possible.
- **My question: Is this something that would be appropriate to include in the juvenile court rules?**

E-filing Update

From JPOD IT newsletter:

JV E-FILING

We have heard you and JV eFiling is a priority within ITS. We are working diligently software development to make this wish a reality. We believe the ability to upload and manage JV documents within E-Filing Manager (Phase 1) will be available during the beginning of the second quarter 2020. As we work on Phase 1, we are researching and creating the JV eFiling program to align with our other eFiling case types (Phase 2) and to be ready for you as soon as possible.

From IT standing committee Oct. 2019 meeting minutes:

JV E-Filing – Kennetha Julien. The first phase of document scanning and viewing JV cases within E-Filing Manager will be developed in first quarter 2020 as un-CMST is completed. This phase will allow for opening documents and routing. We are working to allow Judges to issue orders. Our goal is to complete this functionality in March or April.