AGENDA
COLORADO SUPREME COURT
RULES OF JUVENILE PROCEDURE COMMITTEE

Friday, August 2, 2019, 9:30 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 5/3/19 meeting minutes

III. Old Business
A. Reviewing Current Rules
1. D&N specific C.R.J.P. 2.1 (appointment of counsel)-*see* new draft
2. General Correction to Set of Draft Rules (no feedback received yet)

IV. New Business
A. Other Committee News: Civil Rules Committee has formed a magistrate rules subcommittee
B. Legislative News (FYI):
1) HB19-1932 New ICWA statute effective 5/28/19
2) HB19-1219 New Permanency Statutes effective 8/2/19
C. Need for Piecemeal Adoption of the Rules (Especially Discovery) *see* emails between J.J. Wallace and Judge Miller

V. Adjourn
A. Next Meeting: October 4, 2019, 9 AM, Supreme Court Conference Room

Conference call information

To join the call please **dial 720-625-5050** and, when prompted, enter **participant code, 30019031#** (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 May 3, 2019 Meeting

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 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 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
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	
Judge Craig Welling, Chair Designate	X	

Attachments & Handouts:
(1) Rule 2.1 (appointment of counsel) draft
(2) Rule 2.3 (emergency orders) draft
(3) Contempt Email

(4) Default Comments
(5) Email from David Ayraud re: formal end of D&N case
(6) HB 19-1232 (ICWA)
(7) All Draft Rules (emailed separately)

II. Chair's Report

A. The 3/15/19 minutes were approved without amendment.

III. Old Business

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

Ruchi Kapoor related that her office worked on the draft and combined aspects from the civil rule (C.R.C.P. 121 § 1-1) and from the criminal rule (Crim. P. 44). They strove for consistency between appointed RPC and private counsel and also for consistency with CJD 16-02 (which ORPC is currently updating).

Ruchi explained that subsection (c)(3) (substitution without leave of court) was drafted to address emergency situations and to conform to the CJD. By way of example, she related that ORPC recently had a situation where an RPC passed away during a pending case. The client needed an immediate substitution of counsel. This section was drafted to address concern over a form order lingering in the trial court's inbox. But, other committee members worried that substituting counsel without leave of court could be used on the eve of trial and delay the proceedings. The committee thought adding language allowing the court to veto a substitution or to only allow a substitution without leave of court an adequate number of days before a contested hearing so as not to delay the proceedings.

Sheri Danz noted that the rule, as proposed, does not include procedures for GALs and the committee discussed including express language indicating that the rule applied only to all non-GAL counsel. The committee also discussed incorporating GAL requirements into the rule. Sheri and Ruchi will confer to integrate GALs into the rule.

The committee examined subsection (b) (multiple representation). Ruchi stated that the CJD on RPC will include a prohibition on multi-respondent representation. General consensus was that multiple party representation is covered by the ethics rules and there is no need for a separate rule here. Committee members pointed out that sometimes two respondents may share one private counsel. Because this happens, the committee felt that a tip-off that this issue can arise and where to find the associated requirements may be a good idea in a comment. For example, it may be appropriate for the court to confirm that counsel has advised clients on potential conflicts and the clients have waived any conflict.

The committee was dissatisfied with subsection (d) (termination of representation) because it does not provide any examples of when termination of representation ends.

The committee preferred the approach taken by Crim. P. 44(e), which provides a list of when the proceedings end and counsel's representation is terminated. The committee acknowledged that there are multiple ways the proceedings end in D& N cases and different rules, CJD, and statutes may implicate counsel's obligations. *See* C.A.R. 3.4(b)(4) (obligating trial counsel to file a notice of appeal or ensure a notice of appeal is filed by different counsel); *but* see § 19-1-104(6)(obligating party with whom the child resides to certify the D&N case's APR order to the district court where the child resides). But the committee asked Ruchi to try to list the ways the proceedings (& representation) ends. This may include a residual clause that says the proceedings (& representation) ends "as otherwise ordered by the court."

2. Rule 2.3 Emergency Orders.

Tabled until next meeting.

3. Contempt

Traci Engdol-Fruhwirth and Pam Wakefield reviewed the statute and rule and found no need for changes. In their experience, contempt has been used for recalcitrant parents and, in the past, for children who had run away from a placement or in truancy actions. Committee members indicated that it is not a best practice to use contempt against children. Committee members could only think of one recent use of contempt against for children. In those instances, contempt was used as a tool to avoid a situation involving trafficking and was done with the juveniles' consent. The committee considered whether to include a comment recommending that contempt never be used against children, but decided that was too pointed. However, the committee may consider a comment pointing to the Juvenile Justice and Delinquency Prevention Act (JJDP) Act, which requires states that receive funding from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to deinstitutionalize status offenders.

4. Default vs. Non-Appearing Party Rule

The committee summarized the history of this issue: committee members do not view default as a best practice and recognize many problems with its use in D&N cases. However, the committee also recognizes that some practitioners have strong views in favor of using default in D&N cases.

The chair framed the issue for today's decision-making: the committee needs to decide what procedural mechanism it should recommend to the supreme court for non-appearing respondents. Ultimately, the committee's recommendations will be published for public comment and the Supreme Court may adopt what rules it feels best.

A motion was made for the committee to adopt default as the procedure to resolve claims against non-appearing respondents. The motion was not seconded, and the motion failed.

A motion was made for the committee to adopt the proposed non-appearing/non-defending respondent procedure. A friendly amendment to the rule was accepted to delete the sentence authorizing a proffer of evidence. The committee felt this issue/process (whether an offer of proof suffices) should not be mentioned. It was felt that the issue could percolate with no suggestion in the rule on whether it's authorized or not.

The motion, with the friendly amendment, was seconded.

The motion, as amended, passed unanimously.

When the committee formally recommends a set of rules to the supreme court, the cover letter will highlight the committee's support for the non-appearing/non-defending process over default but will also note that default has supporters among some practitioners.

IV. New Business

1. Formal End to D&N case

The committee began by thinking about why a formal end to the D&N case is important and what problems would it solve: (1) provide a time when counsel completed representation; (2) provide a time after which the department must file a new petition if new allegations arise; (3) provide an opportunity to ensure that an APR order is certified into a district court DR case (members report that, in many case, this important step never happens); (4) provide a time for a formal end to a case when the child is not adopted (aged out; emancipated).

As the committee thought about these issues, members thought of many unique circumstances which ended a case and those number of circumstances weighed in favor of not making a one-fits-all rule. Committee members also felt that forming a rule may touch on substantive law rather than procedure (as with (2), above).

Committee members felt that solving the problems listed above may be best addressed through other rules. For example, when counsel has completed representation can be addressed in the counsel rule, or a rule on permanency orders may include language about certifying the APR order into a district court case. Another idea was to include a general "At the conclusion of the proceedings, the trial court shall enter an order terminating jurisdiction."

2. HB19-1232 (ICWA)

HB19-1232 has been sent to the governor for signature. He has thirty days, and, by its terms, it becomes effective upon signature. There has been no significant opposition to the Act, so it's anticipated that the governor will sign it. The Act is a overhaul of section 19-1-126, C.R.S. (2018). It specifically adopts the federal regulations implementing ICWA. It also places new duties on the court and other parties. The new law defines "reason to know that a child is an Indian child" and sets out a process for the court when

it "receives information that the child may have Indian heritage." The ICWA subcommittee will take up incorporating the new law into the ICWA rules.

3. Complete Set of Draft Rules

The Complete Set of Draft Rules was distributed to the committee members. The chair noted that seeing all the rules together gave her a sense of satisfaction, and it was good to see all the work that's been done over the last several years. She asked members to review the document and bring any issues to the attention of the committee by emailing the chair and/or J.J. She also asked for detail-oriented wordsmiths/grammar nerds to think about volunteering their time to take a close look at the rules.

The committee also discussed using comments. It was decided that comments can explain what the committee is doing and why the committee is doing it that way. Suggestions for additional comments should be emailed to the chair and/or J.J. as well.

Judge Ashby noted that this was her last meeting as chair of the committee due to her retirement at the end of the month. She expressed her gratitude for the committee's hard work. Justice Gabriel thanked Judge Ashby for her lifetime of service on behalf of the supreme court. The committee presented Judge Ashby with a card celebrating her upcoming retirement.

Judge Welling will begin serving as chair. Judge Ashby will continue to serve on the committee as a member.

V. Adjourn Next Meeting June 21st

The Committee adjourned at 11:15 PM.

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Respectfully Submitted,
J.J. Wallace

RULE 2.1. ATTORNEY OF RECORD

(1) Entry of Appearance.

a) **Attorney of Record.** An attorney shall be deemed of record when the attorney appears personally before the court, files a written entry of appearance or has been appointed by the court. Respondent Parent Counsel may also be appointed by the Office of Respondent Parents' counsel as set out in chief justice directive.

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

(2) Appointment of Respondent Parent Counsel in Article 3 Proceedings

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

~~**(b) Multiple Representation by Counsel.** Whenever two or more respondents have been named in a petition for dependency or neglect, and are represented by the same retained or assigned counsel or by retained or assigned counsel who are associated in the practice of law, the court shall promptly inquire with respect to such joint representation and shall advise each respondent of the right to the effective assistance of counsel, including separate representation. For respondents appointed counsel through the Office of Respondent Parents' Counsel, pursuant to chief justice directive, two respondents shall not be represented by the same appointed counsel.~~

(b) Request for Withdrawal of a Lawyer During Proceedings.

1) **Notice of Withdrawal.** An attorney may withdraw from a case only upon order of the court. Such approval shall rest in the sound discretion of the court and shall not be granted until the attorney seeking to withdraw has made diligent efforts to give actual notice to the client. A request to withdraw shall be in writing and shall be made as soon as practicable upon the lawyer becoming aware of the grounds for withdrawal. Such notice to withdraw shall include:
   (I) That the attorney wishes to withdraw;
   (II) That the court retains jurisdiction;
   (III) That the respondent has the right to object to withdrawal within such time as permitted by the court, no more than 7 days from the date of the notice;
   (IV) That a hearing will be held and withdrawal will only be allowed if the court approves;
   (V) That the respondent has the obligation to appear at all previously scheduled court dates;
   (VI) That if the request to withdraw is granted, then the respondent will have the obligation to hire other counsel, request the appointment of counsel by the court or elect to represent himself or herself.

Commented [RK1]: This heading might need to be tailored to reflect the GAL representation of best interests & possibility of appointed & private counsel entering appearances

Commented [RK2]: The consensus was to delete this section out and put something into a comment but I wanted to leave the language here as a reminder to draft a comment about this. The committee discussed putting something into comments akin to an advisement by the trial court on potential conflicts and a waiver of those conflicts.

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

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

(I) **Substitution of Appointed Counsel.** With the pre-authorization of the Office of Respondent Parents' Counsel pursuant to chief justice directive, an appointed attorney can substitute for another appointed attorney by filing a "Notice of Substitution of Counsel by The ORPC." Such notice must have all the elements set forth for substituting counsel set forth in this rule.

(c) Termination of Representation. Counsel's appointment through the Office of Respondent Parent Counsel terminates at the following points:

(I) Certification of order allocating parental responsibilities to a district court case;
(II) Entry of an order terminating parental rights if no appeal is filed;
(III) Issuance of mandate by the appellate court;
(IV) Dismissal of a Respondent from the case; or
(V) As otherwise ordered by the court.

HOUSE BILL 19-1232

BY REPRESENTATIVE(S) Gonzales-Gutierrez and Catlin, Arndt, Bird, Buckner, Duran, Esgar, Exum, Froelich, Herod, Hooton, Jackson, Jaquez Lewis, Kennedy, Lontine, McCluskie, McLachlan, Michaelson Jenet, Roberts, Singer, Sirota, Snyder, Tipper, Titone, Valdez A., Valdez D., Weissman, Will, Wilson, Becker, Benavidez, Buentello, Coleman, Cutter, Gray, Kipp, Melton;
also SENATOR(S) Coram and Rodriguez, Cooke, Court, Crowder, Fields, Ginal, Gonzales, Priola, Tate, Todd, Williams A.

CONCERNING THE ALIGNMENT OF COMPLIANCE WITH THE FEDERAL "INDIAN CHILD WELFARE ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. The general assembly finds that the bureau of Indian affairs in the United States department of the interior published updated regulations regarding the implementation of the federal "Indian Child Welfare Act" (ICWA) in 2016, codified at 25 CFR 23. The general assembly therefore declares that it is a matter of statewide importance to align Colorado's statute with the updated ICWA regulations to ensure continuing compliance with federal law.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

SECTION 2. In Colorado Revised Statutes, **amend** 19-1-126 as follows:

19-1-126. Compliance with the federal "Indian Child Welfare Act". (1) ~~Commencing thirty days after May 30, 2002,~~ IN EACH CASE FILED PURSUANT TO THIS TITLE 19 THAT CONSTITUTES A CHILD CUSTODY PROCEEDING, AS DEFINED IN THE FEDERAL "INDIAN CHILD WELFARE ACT", 25 U.S.C. SEC. 1901, ET SEQ., AND THEREFORE TO WHICH THE TERMS OF THE FEDERAL "INDIAN CHILD WELFARE ACT", 25 U.S.C. SEC. 1901, ET SEQ., APPLY, THE COURT AND EACH PARTY TO THE PROCEEDING SHALL COMPLY WITH THE FEDERAL IMPLEMENTING REGULATIONS, AND ANY MODIFICATIONS THEREOF, OF THE FEDERAL "INDIAN CHILD WELFARE ACT", 25 U.S.C. SEC. 1901, ET SEQ., LOCATED IN 25 CFR 23, WHICH OUTLINE THE MINIMUM FEDERAL STANDARDS GOVERNING THE IMPLEMENTATION OF THE "INDIAN CHILD WELFARE ACT" TO ENSURE THE STATUTE IS APPLIED IN COLORADO CONSISTENT WITH THE ACT'S EXPRESS LANGUAGE, CONGRESS'S INTENT IN ENACTING THE STATUTE, AND TO PROMOTE THE STABILITY AND SECURITY OF INDIAN CHILDREN, TRIBES, AND FAMILIES. In each ~~case~~ CHILD-CUSTODY PROCEEDING filed pursuant to this ~~title~~ TITLE 19 to which the terms of the federal "Indian Child Welfare Act", 25 U.S.C. sec. 1901, et seq., apply: ~~including but not limited to certain juvenile delinquency proceedings, dependency or neglect proceedings, termination of parental rights proceedings, and pre-adoptive and adoption proceedings, the petitioning or filing party shall:~~

(a) (I) ~~Make continuing~~ THE COURT SHALL MAKE inquiries to determine whether the child who is the subject of the proceeding is an Indian child, and, if so, shall determine the identity of the Indian child's tribe. IN DETERMINING THE INDIAN CHILD'S TRIBE:

(A) THE COURT SHALL ASK EACH PARTICIPANT IN AN EMERGENCY OR VOLUNTARY OR INVOLUNTARY CHILD-CUSTODY PROCEEDING WHETHER THE PARTICIPANT KNOWS OR HAS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD. THE INQUIRY IS TO BE MADE AT THE COMMENCEMENT OF THE PROCEEDING, AND ALL RESPONSES MUST BE ON THE RECORD. THE COURT SHALL INSTRUCT THE PARTICIPANTS TO INFORM THE COURT IF ANY PARTICIPANT SUBSEQUENTLY RECEIVES INFORMATION THAT PROVIDES REASON TO KNOW THE CHILD IS AN INDIAN CHILD.

(B) ANY PARTY TO THE PROCEEDING SHALL DISCLOSE ANY

INFORMATION INDICATING THAT THE CHILD IS AN INDIAN CHILD OR PROVIDE AN IDENTIFICATION CARD INDICATING MEMBERSHIP IN A TRIBE TO THE PETITIONING AND FILING PARTIES AND THE COURT IN A TIMELY MANNER. THE COURT SHALL ORDER THE PARTY TO PROVIDE THE INFORMATION NO LATER THAN SEVEN BUSINESS DAYS AFTER THE DATE OF THE HEARING OR PRIOR TO THE NEXT HEARING ON THE MATTER, WHICHEVER OCCURS FIRST. THE INFORMATION SHOULD BE FILED WITH THE COURT AND PROVIDED TO THE COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES AND EACH PARTY NO LATER THAN SEVEN BUSINESS DAYS AFTER THE DATE OF THE HEARING.

(II) THE COURT, UPON CONDUCTING THE INQUIRY DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION, HAS REASON TO KNOW THAT A CHILD IS AN INDIAN CHILD IF:

(A) ANY PARTICIPANT IN THE CHILD-CUSTODY PROCEEDING, OFFICER OF THE COURT INVOLVED IN THE CHILD-CUSTODY PROCEEDING, INDIAN TRIBE, INDIAN ORGANIZATION, OR AGENCY INFORMS THE COURT THAT THE CHILD IS AN INDIAN CHILD;

(B) ANY PARTICIPANT IN THE CHILD-CUSTODY PROCEEDING, OFFICER OF THE COURT INVOLVED IN THE CHILD-CUSTODY PROCEEDING, INDIAN TRIBE, INDIAN ORGANIZATION, OR AGENCY INFORMS THE COURT THAT IT HAS DISCOVERED INFORMATION INDICATING THAT THE CHILD IS AN INDIAN CHILD;

(C) THE CHILD WHO IS THE SUBJECT OF THE CHILD-CUSTODY PROCEEDING GIVES THE COURT REASON TO KNOW HE OR SHE IS AN INDIAN CHILD;

(D) THE COURT IS INFORMED THAT THE DOMICILE OR RESIDENCE OF THE CHILD, THE CHILD'S PARENT, OR THE CHILD'S INDIAN CUSTODIAN IS ON A RESERVATION OR IN AN ALASKA NATIVE VILLAGE;

(E) THE COURT IS INFORMED THAT THE CHILD IS OR HAS BEEN A WARD OF A TRIBAL COURT, AS DEFINED IN 25 U.S.C. SEC. 1903; OR

(F) THE COURT IS INFORMED THAT THE CHILD OR THE CHILD'S PARENT POSSESSES AN IDENTIFICATION CARD INDICATING MEMBERSHIP IN AN INDIAN TRIBE.

(b) If the ~~petitioning or filing party~~ COURT knows or has reason to ~~believe~~ KNOW, AS DEFINED IN SUBSECTION (1)(a)(II) OF THIS SECTION, that the child who is the subject of the proceeding is an Indian child, THE PETITIONING OR FILING PARTY SHALL send notice by registered OR CERTIFIED mail, return receipt requested, to the ~~parent or Indian custodian~~ PARENT OR PARENTS, THE INDIAN CUSTODIAN OR INDIAN CUSTODIANS of ~~such~~ THE child AND to the tribal agent of the Indian child's tribe as designated in ~~title 25 of the code of federal regulations, part 23~~ 25 CFR 23, or, if ~~such agent has not been designated, to the highest-elected or highest-appointed official of the Indian child's tribe, to the highest-elected or highest-appointed tribal judge of the Indian child's tribe, and to the social service department of the Indian child's tribe; and~~ THERE IS NO DESIGNATED TRIBAL AGENT, THE PETITIONING OR FILING PARTY SHALL CONTACT THE TRIBE TO BE DIRECTED TO THE APPROPRIATE OFFICE OR INDIVIDUAL. IN PROVIDING NOTICE, THE COURT AND EACH PARTY SHALL COMPLY WITH 25 CFR 23.111.

(c) ~~Disclose~~ THE PETITIONING OR FILING PARTY SHALL DISCLOSE in the complaint, petition, or other commencing pleading filed with the court that the child who is the subject of the proceeding is an Indian child and the identity of the Indian child's tribe or what efforts the petitioning or filing party has made in determining whether the child is an Indian child. If the child who is the subject of the proceeding is determined to be an Indian child, the petitioning or filing party shall further identify what reasonable efforts have been made to send notice to the persons identified in ~~paragraph (b) of this subsection (1)~~ SUBSECTION (1)(b) OF THIS SECTION. The postal receipts indicating that notice was properly sent by ~~such~~ THE petitioning or filing party to the parent or Indian custodian of the Indian child and to the Indian child's tribe ~~shall~~ MUST be attached to the complaint, petition, or other commencing pleading filed with the court; except that, if notification has not been perfected at the time the initial complaint, petition, or other commencing pleading is filed with the court or if the postal receipts have not been received back from the post office, the petitioning or filing party shall ~~identify such circumstances to the court and shall thereafter~~ file the postal receipts with the court. ~~within ten days after the filing of the complaint, petition, or other commencing pleading~~ ANY RESPONSES SENT BY THE TRIBAL AGENTS TO THE PETITIONING OR FILING PARTY, THE COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES, OR THE COURT MUST BE DISTRIBUTED TO THE PARTIES AND DEPOSITED WITH THE COURT.

(2) ~~In any of the cases identified in subsection (1) of this section in~~

~~which the initial complaint, petition, or other commencing pleading does not disclose whether the child who is the subject of the proceeding is an Indian child, the court shall inquire of the parties at the first hearing whether the child is an Indian child and, if so, whether the parties have complied with the procedural requirements set forth in the federal "Indian Child Welfare Act", 25 U.S.C. sec. 1901, et seq.~~ IF THERE IS REASON TO KNOW THE CHILD IS AN INDIAN CHILD BUT THE COURT DOES NOT HAVE SUFFICIENT EVIDENCE TO DETERMINE THAT THE CHILD IS OR IS NOT AN INDIAN CHILD, THE COURT SHALL:

(a) CONFIRM, BY WAY OF A REPORT, DECLARATION, OR TESTIMONY INCLUDED IN THE RECORD, THAT THE PETITIONING OR FILING PARTY USED DUE DILIGENCE TO IDENTIFY AND WORK WITH ALL OF THE TRIBES OF WHICH THERE IS REASON TO KNOW THE CHILD MAY BE A MEMBER, OR ELIGIBLE FOR MEMBERSHIP, TO VERIFY WHETHER THE CHILD IS IN FACT A MEMBER, OR A BIOLOGICAL PARENT IS A MEMBER AND THE CHILD IS ELIGIBLE FOR MEMBERSHIP; AND

(b) 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.

(3) ~~The state department of human services and the county departments of human or social services are encouraged to work cooperatively in the sharing of information that any of such agencies obtains or receives concerning any federally recognized tribal entities existing outside the state of Colorado, including but not limited to information about the appropriate person from a tribal entity to contact with the notice prescribed by this section~~ IF THE COURT RECEIVES INFORMATION THAT THE CHILD MAY HAVE INDIAN HERITAGE BUT DOES NOT HAVE SUFFICIENT INFORMATION TO DETERMINE THAT THERE IS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD PURSUANT TO SUBSECTION (1)(a)(II) OF THIS SECTION, THE COURT SHALL DIRECT THE PETITIONING OR FILING PARTY TO EXERCISE DUE DILIGENCE IN GATHERING ADDITIONAL INFORMATION THAT WOULD ASSIST THE COURT IN DETERMINING WHETHER THERE IS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD. THE COURT SHALL DIRECT THE PETITIONING OR FILING PARTY TO MAKE A RECORD OF THE EFFORT TAKEN TO DETERMINE WHETHER OR NOT THERE IS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD.

~~(4) (a) In any of the cases identified in subsection (1) of this section involving an Indian child, in determining whether to transfer such a case to a tribal court, the court is encouraged to consider the following guidelines:~~

~~(I) The court may find that good cause exists to deny a transfer of the proceeding to the tribal court if the Indian child's tribe does not have a tribal court; or~~

~~(II) The court may find that good cause exists to deny a transfer of the proceeding to the tribal court if:~~

~~(A) Either of the Indian child's parents objects to such a transfer; or~~

~~(B) The proceeding was at an advanced stage when the petition to transfer the proceeding to the tribal court was received from the Indian child's tribe and the petitioning party did not file the petition to transfer to the tribal court promptly after receiving the notice of hearing.~~

~~(b) The burden of proof under this subsection (4) shall be on the party opposing a transfer of the case~~ IF THE COURT FINDS THAT THE CHILD IS AN INDIAN CHILD, THE COURT SHALL ENSURE COMPLIANCE WITH THE REQUIREMENTS OF THE FEDERAL "INDIAN CHILD WELFARE ACT", 25 U.S.C. SEC. 1901, ET SEQ.

SECTION 3. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED May 28, 2019 at 1:36 p.m.
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

HOUSE BILL 19-1219

BY REPRESENTATIVE(S) Gonzales-Gutierrez, Beckman, Bird, Buckner, Buentello, Caraveo, Coleman, Cutter, Duran, Esgar, Exum, Froelich, Galindo, Gray, Herod, Hooton, Jackson, Jaquez Lewis, Kennedy, Kipp, Lontine, McCluskie, McKean, McLachlan, Michaelson Jenet, Singer, Sirota, Snyder, Soper, Sullivan, Tipper, Titone, Valdez A., Weissman, Becker;
also SENATOR(S) Crowder, Tate.

CONCERNING MODERNIZATION OF THE PERMANENCY HEARING STATUTES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **repeal and reenact, with amendments,** 19-3-702 as follows:

19-3-702. Permanency hearing. (1) (a) IN ORDER TO PROVIDE STABLE, PERMANENT HOMES FOR EVERY CHILD OR YOUTH PLACED OUT OF THE HOME, IN AS SHORT A TIME AS POSSIBLE, A COURT SHALL CONDUCT A PERMANENCY PLANNING HEARING. THE COURT SHALL HOLD THE PERMANENCY PLANNING HEARING AS SOON AS POSSIBLE FOLLOWING THE INITIAL DISPOSITIONAL HEARING PURSUANT TO THIS ARTICLE 3; EXCEPT THAT THE PERMANENCY PLANNING HEARING MUST BE HELD NO LATER THAN

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

NINETY DAYS AFTER THE INITIAL DECREE OF DISPOSITION. AFTER THE INITIAL PERMANENCY PLANNING HEARING, THE COURT SHALL HOLD ADDITIONAL HEARINGS AT LEAST EVERY SIX MONTHS WHILE THE CASE REMAINS OPEN OR MORE OFTEN IN THE DISCRETION OF THE COURT, OR UPON THE MOTION OF ANY PARTY. WHEN POSSIBLE, THE PERMANENCY PLANNING HEARING MUST BE COMBINED WITH THE IN-PERSON SIX-MONTH REVIEW AS PROVIDED FOR IN SECTION 19-1-115 (4)(c) OR SUBSECTION (6)(a) OF THIS SECTION. THE COURT SHALL HOLD ALL PERMANENCY PLANNING HEARINGS IN PERSON, PROVIDE PROPER NOTICE TO ALL PARTIES, AND PROVIDE ALL PARTIES THE OPPORTUNITY TO BE HEARD. THE COURT SHALL CONSULT WITH THE CHILD OR YOUTH IN A DEVELOPMENTALLY APPROPRIATE MANNER REGARDING THE CHILD'S OR YOUTH'S PERMANENCY GOAL.

(b) IF THE COURT FINDS THAT REASONABLE EFFORTS TO REUNIFY THE CHILD OR YOUTH AND THE PARENT ARE NOT REQUIRED PURSUANT TO SECTION 19-1-115 (7) OR IF THERE IS A FINDING THAT NO APPROPRIATE TREATMENT PLAN CAN BE DEVISED PURSUANT TO SECTION 19-3-508 (1)(d)(I), THE COURT SHALL HOLD A PERMANENCY PLANNING HEARING WITHIN THIRTY DAYS AFTER THE FINDING. IF THE COURT FINDS THAT REASONABLE EFFORTS TO REUNIFY THE CHILD OR YOUTH AND THE PARENT ARE NOT REQUIRED AND A MOTION FOR TERMINATION HAS BEEN FILED PURSUANT TO SECTION 19-3-602, THE PERMANENCY PLANNING HEARING AND THE HEARING ON THE MOTION FOR TERMINATION MAY BE COMBINED, AND THE COURT SHALL MAKE ALL DETERMINATIONS REQUIRED AT BOTH HEARINGS IN THE COMBINED HEARING.

(2) (a) WHEN THE COURT SCHEDULES A PERMANENCY PLANNING HEARING PURSUANT TO THIS SECTION, THE COURT OR DESIGNEE OF THE COURT SHALL PROMPTLY ISSUE A NOTICE STATING THE PURPOSE OF THE HEARING. THE NOTICE MUST SET FORTH THE CONSTITUTIONAL AND STATUTORY RIGHTS OF THE CHILD'S OR YOUTH'S PARENTS OR GUARDIAN AND THE STATUTORY RIGHTS OF THE CHILD OR YOUTH. THE NOTICE OF THE HEARING MUST COMPLY WITH THE REQUIREMENTS STATED IN SECTION 19-3-502 (7) AND MUST BE SENT TO PARENTS OR GUARDIANS, PLACEMENT PROVIDERS, AND NAMED CHILDREN OR YOUTH.

(b) THE COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES SHALL PROPOSE A PERMANENCY PLAN FOR EACH CHILD OR YOUTH, WHICH PLAN MUST BE COMPLETED AND SUBMITTED TO THE COURT IN THE FAMILY SERVICES PLAN NO LATER THAN FIVE DAYS IN ADVANCE OF THE

PERMANENCY PLANNING HEARING.

(3) AT ANY PERMANENCY PLANNING HEARING, THE COURT SHALL FIRST DETERMINE IF THE CHILD OR YOUTH SHOULD BE RETURNED TO THE CHILD'S OR YOUTH'S PARENT, NAMED GUARDIAN, OR LEGAL CUSTODIAN AND, IF APPLICABLE, THE DATE ON WHICH THE CHILD OR YOUTH MUST BE RETURNED. IF THE CHILD OR YOUTH CANNOT BE RETURNED HOME, THE COURT SHALL ALSO DETERMINE WHETHER REASONABLE EFFORTS HAVE BEEN MADE TO FIND A SAFE AND STABLE PERMANENT HOME FOR THE CHILD OR YOUTH. THE COURT SHALL NOT DELAY PERMANENCY PLANNING BY CONSIDERING THE PLACEMENT OF CHILDREN OR YOUTH TOGETHER AS A SIBLING GROUP. AT ANY PERMANENCY PLANNING HEARING, THE COURT SHALL MAKE THE FOLLOWING DETERMINATIONS, WHEN APPLICABLE:

(a) WHETHER PROCEDURAL SAFEGUARDS TO PRESERVE PARENTAL RIGHTS HAVE BEEN APPLIED IN CONNECTION WITH ANY CHANGE IN THE CHILD'S OR YOUTH'S PLACEMENT OR ANY DETERMINATION AFFECTING PARENTAL VISITATION OF THE CHILD OR YOUTH;

(b) WHETHER REASONABLE EFFORTS HAVE BEEN MADE TO FINALIZE THE PERMANENCY GOAL;

(c) WHETHER ONGOING EFFORTS HAVE BEEN MADE TO IDENTIFY KIN AND RELATIVES THAT ARE AVAILABLE TO BE A PERMANENT PLACEMENT FOR THE CHILD OR YOUTH;

(d) WHEN THE CHILD OR YOUTH RESIDES IN A PLACEMENT OUT OF STATE, WHETHER THE OUT-OF-STATE PLACEMENT CONTINUES TO BE APPROPRIATE AND IN THE BEST INTERESTS OF THE CHILD OR YOUTH;

(e) WHETHER A CHILD OR YOUTH WHO IS FOURTEEN YEARS OF AGE OR OLDER IS RECEIVING TRANSITION SERVICES TO SUCCESSFUL ADULTHOOD, REGARDLESS OF HIS OR HER PERMANENCY GOAL; AND

(f) WHETHER THE CURRENT PLACEMENT OF THE CHILD OR YOUTH COULD BE A PERMANENT PLACEMENT, IF NECESSARY.

(4) (a) IF THE CHILD OR YOUTH CANNOT BE RETURNED TO THE PHYSICAL CUSTODY OF THE CHILD'S OR YOUTH'S PARENT OR LEGAL GUARDIAN ON THE DATE OF THE HEARING, THE COURT SHALL ENTER ONE OR

MORE OF THE FOLLOWING PERMANENCY GOALS, OF WHICH SUBSECTIONS (4)(a)(I) TO (4)(a)(V) OF THIS SECTION MAY BE ADOPTED AS CONCURRENT GOALS PURSUANT TO SECTION 19-3-508 (7):

(I) RETURN HOME;

(II) ADOPTION WITH A RELATIVE;

(III) PERMANENT PLACEMENT WITH A RELATIVE THROUGH LEGAL GUARDIANSHIP OR ALLOCATION OF PARENTAL RESPONSIBILITIES;

(IV) ADOPTION WITH A NONRELATIVE;

(V) PERMANENT PLACEMENT WITH A NONRELATIVE THROUGH LEGAL GUARDIANSHIP OR ALLOCATION OF PARENTAL RESPONSIBILITIES;

(VI) (A) OTHER PLANNED PERMANENT LIVING ARRANGEMENTS EITHER THROUGH EMANCIPATION OR LONG-TERM FOSTER CARE.

(B) OTHER PLANNED PERMANENT LIVING ARRANGEMENTS MAY ONLY BE USED AS A PERMANENCY GOAL FOR CHILDREN OR YOUTH IN EXCEPTIONAL CIRCUMSTANCES FOR CHILDREN SIXTEEN YEARS OF AGE OR OLDER WHO HAVE CO-OCCURRING COMPLEX CONDITIONS THAT PRECLUDE THEIR RETURN HOME, THEIR ADOPTION OR LEGAL GUARDIANSHIP, OR ALLOCATION OF PARENTAL RESPONSIBILITIES; OR FOR CHILDREN AND YOUTH WHO ARE IN THE UNACCOMPANIED REFUGEE MINOR PROGRAM, REGARDLESS OF THEIR AGE.

(C) OTHER PLANNED PERMANENT LIVING ARRANGEMENTS MAY NOT BE USED AS A CONCURRENT GOAL.

(D) THE COURT SHALL ASK THE CHILD OR YOUTH ABOUT HIS OR HER DESIRED PERMANENCY OUTCOME WHEN CONSIDERING OTHER PLANNED PERMANENT LIVING ARRANGEMENTS.

(b) (I) THE DEPARTMENT SHALL DOCUMENT IN THE FAMILY SERVICES PLAN THE COMPELLING REASONS WHY IT IS NOT IN THE BEST INTEREST OF THE CHILD OR YOUTH TO RETURN HOME, BE PLACED FOR ADOPTION, BE PLACED WITH A LEGAL GUARDIAN, OR BE PLACED WITH A FIT AND WILLING RELATIVE. IN ADDITION, THE DEPARTMENT SHALL DOCUMENT INTENSIVE, ONGOING, AND UNSUCCESSFUL EFFORTS MADE TO RETURN THE CHILD OR

YOUTH HOME OR TO A SECURE PLACEMENT WITH A FIT AND WILLING RELATIVE, INCLUDING ADULT SIBLINGS; A LEGAL GUARDIAN; OR AN ADOPTIVE PARENT, INCLUDING EFFORTS THAT UTILIZE SEARCH TECHNOLOGY THAT INCLUDES SOCIAL MEDIA TO FIND BIOLOGICAL FAMILY MEMBERS FOR THE CHILDREN OR YOUTH.

(II) THE DEPARTMENT SHALL DOCUMENT IN THE FAMILY SERVICES PLAN AND THE COURT SHALL REVIEW WHETHER THE CHILD'S OR YOUTH'S PLACEMENT IS FOLLOWING THE REASONABLE AND PRUDENT PARENT STANDARD AND WHETHER THE CHILD OR YOUTH HAS REGULAR, ONGOING OPPORTUNITIES TO ENGAGE IN AGE-APPROPRIATE ACTIVITIES.

(c) PRIOR TO CLOSING A CASE BEFORE A CHILD'S EIGHTEENTH BIRTHDAY, THE COURT OR THE CHILD'S GUARDIAN AD LITEM SHALL NOTIFY THE CHILD THAT HE OR SHE WILL LOSE THE RIGHT TO RECEIVE MEDICAID UNTIL THE MAXIMUM AGE PROVIDED BY FEDERAL LAW IF THE CASE IS CLOSED PRIOR TO THE CHILD'S EIGHTEENTH BIRTHDAY.

(d) EVERY CHILD WHO IS EIGHTEEN YEARS OF AGE OR OLDER WHO IS LEAVING FOSTER OR KINSHIP CARE MUST BE PROVIDED WITH HIS OR HER BIRTH CERTIFICATE, SOCIAL SECURITY CARD, HEALTH INSURANCE INFORMATION, MEDICAL RECORDS, EITHER A DRIVER'S LICENSE OR STATE-ISSUED IDENTIFICATION CARD, AND PROOF OF FOSTER CARE.

(e) IF THE COURT FINDS THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE CHILD OR YOUTH WILL BE RETURNED TO A PARENT OR LEGAL GUARDIAN WITHIN SIX MONTHS AND THE CHILD OR YOUTH APPEARS TO BE ADOPTABLE AND MEETS THE CRITERIA FOR ADOPTION IN SECTION 19-5-203, THE COURT MAY ORDER THE COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES TO SHOW CAUSE WHY IT SHOULD NOT FILE A MOTION TO TERMINATE THE PARENT-CHILD LEGAL RELATIONSHIP PURSUANT TO PART 6 OF THIS ARTICLE 3. CAUSE MAY INCLUDE, BUT IS NOT LIMITED TO, ANY OF THE FOLLOWING CONDITIONS:

(I) THE PARENT OR LEGAL GUARDIAN HAS MAINTAINED REGULAR PARENTING TIME AND CONTACT WITH THE CHILD OR YOUTH, AND THE CHILD OR YOUTH WOULD BENEFIT FROM CONTINUING THIS RELATIONSHIP;

(II) A CHILD WHO IS TWELVE YEARS OF AGE OR OLDER OBJECTS TO TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP;

(III) THE CHILD'S FOSTER PARENTS ARE UNABLE TO ADOPT THE CHILD BECAUSE OF EXCEPTIONAL CIRCUMSTANCES THAT DO NOT INCLUDE AN UNWILLINGNESS TO ACCEPT LEGAL RESPONSIBILITY FOR THE CHILD. THE FOSTER PARENTS MUST BE WILLING AND CAPABLE OF PROVIDING THE CHILD WITH A STABLE AND PERMANENT ENVIRONMENT, AND IT MUST BE SHOWN THAT REMOVAL OF THE CHILD FROM THE PHYSICAL CUSTODY OF HIS OR HER FOSTER PARENTS WOULD BE SERIOUSLY DETRIMENTAL TO THE EMOTIONAL WELL-BEING OF THE CHILD; OR

(IV) THE CRITERIA FOR TERMINATION IN SECTION 19-3-604 HAVE NOT YET BEEN MET.

(5) FOR A CHILD OR YOUTH IN A CASE DESIGNATED PURSUANT TO SECTION 19-1-123 ONLY:

(a) A PERMANENT HOME IS THE PLACE IN WHICH THE CHILD OR YOUTH MAY RESIDE IF THE CHILD OR YOUTH IS UNABLE TO RETURN HOME TO A PARENT OR LEGAL GUARDIAN. IF THE COURT DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT A PERMANENT HOME IS NOT CURRENTLY AVAILABLE OR THAT THE CHILD'S OR YOUTH'S CURRENT NEEDS OR SITUATION PROHIBIT PLACEMENT, THE COURT MUST BE SHOWN AND THE COURT MUST FIND THAT REASONABLE EFFORTS, AS DEFINED IN SECTION 19-1-103 (89), WERE MADE TO FIND THE CHILD OR YOUTH AN APPROPRIATE PERMANENT HOME AND SUCH A HOME IS NOT CURRENTLY AVAILABLE OR THAT A CHILD'S OR YOUTH'S NEEDS OR SITUATION PROHIBIT THE CHILD OR YOUTH FROM A SUCCESSFUL PLACEMENT IN A PERMANENT HOME.

(b) REGARDLESS OF ANY PERMANENT HOME FINDINGS MADE PURSUANT TO THIS SECTION, REASONABLE EFFORTS SHALL CONTINUE TO BE MADE TO RETURN THE CHILD OR YOUTH HOME UNLESS THE COURT HAS PREVIOUSLY FOUND OR FINDS THAT REUNIFICATION IS NOT AN OPTION PURSUANT TO SECTION 19-1-115 (7). ANY FINDINGS BY THE COURT REGARDING A PERMANENT HOME SHALL NOT DELAY OR INTERFERE WITH REUNIFICATION OF A CHILD OR YOUTH WITH A PARENT OR LEGAL GUARDIAN.

(c) AT A PERMANENCY PLANNING HEARING THAT OCCURS IMMEDIATELY PRIOR TO TWELVE MONTHS AFTER THE ORIGINAL PLACEMENT OF THE CHILD OR YOUTH OUT OF THE HOME, THE COURT SHALL MAKE A FINDING IDENTIFYING WHETHER THE CHILD OR YOUTH IS IN A PLACEMENT THAT CAN PROVIDE LEGAL PERMANENCY. THE COURT MUST MAKE THIS

FINDING TO ENSURE THAT A CHILD OR YOUTH WHO HAS BEEN REMOVED FROM HIS OR HER HOME IS PLACED IN A PERMANENT HOME AS EXPEDITIOUSLY AS POSSIBLE.

(d) THE COURT SHALL REVIEW THE CASE AT A PERMANENCY PLANNING HEARING AT LEAST EVERY SIX MONTHS UNTIL THE COURT FINDS THAT THE CHILD OR YOUTH IS IN A PERMANENT HOME. THE PERMANENCY PLANNING HEARINGS SHALL CONTINUE AS LONG AS THE COURT IS UNABLE TO FIND THAT THE CHILD OR YOUTH IS IN A PERMANENT HOME. AT EACH HEARING, THE COURT MUST BE PROVIDED EVIDENCE THAT A CHILD OR YOUTH IS IN A PERMANENT HOME OR THAT REASONABLE EFFORTS, AS DEFINED IN SECTION 19-1-103 (89), CONTINUE TO BE MADE TO FIND THE CHILD OR YOUTH AN APPROPRIATE PERMANENT HOME AND SUCH A HOME IS NOT CURRENTLY AVAILABLE OR THAT A CHILD'S OR YOUTH'S NEEDS OR SITUATION PROHIBIT THE CHILD OR YOUTH FROM SUCCESSFUL PLACEMENT IN A PERMANENT HOME.

(e) AT EACH PERMANENCY PLANNING HEARING, THE CASEWORKER AND THE CHILD'S OR YOUTH'S GUARDIAN AD LITEM SHALL PROVIDE THE COURT WITH A WRITTEN OR VERBAL REPORT SPECIFYING WHAT EFFORTS HAVE BEEN MADE TO IDENTIFY A PERMANENT HOME FOR THE CHILD OR YOUTH AND WHAT SERVICES HAVE BEEN PROVIDED TO THE CHILD OR YOUTH TO FACILITATE IDENTIFICATION OF A PERMANENT HOME.

(f) IN DETERMINING WHETHER A CHILD OR YOUTH IS IN A PERMANENT HOME, THE COURT SHALL CONSIDER PLACEMENT OF THE CHILDREN OR YOUTH TOGETHER AS A SIBLING GROUP PURSUANT TO SECTION 19-3-213.

(6) IF A PLACEMENT CHANGE IS CONTESTED BY A NAMED PARTY OR CHILD OR YOUTH AND THE CHILD OR YOUTH IS NOT REUNIFYING WITH A PARENT OR LEGAL GUARDIAN, THE COURT SHALL CONSIDER ALL PERTINENT INFORMATION, INCLUDING THE CHILD'S OR YOUTH'S WISHES, RELATED TO MODIFYING THE PLACEMENT OF THE CHILD OR YOUTH PRIOR TO REMOVING THE CHILD OR YOUTH FROM HIS OR HER PLACEMENT, AND INCLUDING THE FOLLOWING:

(a) AN INDIVIDUALIZED ASSESSMENT OF THE CHILD'S OR YOUTH'S NEEDS CREATED PURSUANT TO TITLE IV-E OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, AND REGULATIONS PROMULGATED THEREUNDER, AS AMENDED;

(b) WHETHER THE CHILD'S OR YOUTH'S PLACEMENT AT THE TIME OF THE HEARING IS A SAFE AND POTENTIALLY PERMANENT HOME FOR THE CHILD OR YOUTH;

(c) THE CHILD'S OR YOUTH'S ACTUAL AGE AND DEVELOPMENTAL STAGE AND, IN CONSIDERATION OF THIS INFORMATION, THE CHILD'S OR YOUTH'S ATTACHMENT NEEDS;

(d) WHETHER THE CHILD OR YOUTH HAS SIGNIFICANT PSYCHOLOGICAL TIES TO A PERSON WHO COULD PROVIDE A PERMANENT HOME FOR THE CHILD OR YOUTH, INCLUDING A RELATIVE, AND, IF SO, WHETHER THIS PERSON MAINTAINED CONTACT WITH THE CHILD OR YOUTH DURING THE CHILD'S OR YOUTH'S PLACEMENT OUT OF THE HOME;

(e) WHETHER A PERSON WHO COULD PROVIDE A PERMANENT HOME FOR THE CHILD OR YOUTH IS WILLING TO MAINTAIN APPROPRIATE CONTACT AFTER AN ADOPTION OF THE CHILD OR YOUTH WITH THE CHILD'S OR YOUTH'S RELATIVES, PARTICULARLY SIBLING RELATIVES, WHEN SUCH CONTACT IS SAFE, REASONABLE, AND APPROPRIATE;

(f) WHETHER A PERSON WHO COULD PROVIDE A PERMANENT HOME FOR THE CHILD OR YOUTH IS AWARE OF THE CHILD'S OR YOUTH'S CULTURE AND IS WILLING TO PROVIDE THE CHILD OR YOUTH WITH POSITIVE TIES TO HIS OR HER CULTURE;

(g) THE CHILD'S OR YOUTH'S MEDICAL, PHYSICAL, EMOTIONAL, OR OTHER SPECIFIC NEEDS, AND WHETHER A PERSON WHO COULD PROVIDE A PERMANENT PLACEMENT FOR THE CHILD OR YOUTH IS ABLE TO MEET THE CHILD'S OR YOUTH'S NEEDS; AND

(h) THE CHILD'S OR YOUTH'S ATTACHMENT TO THE CHILD'S OR YOUTH'S CAREGIVER AT THE TIME OF THE HEARING AND THE POSSIBLE EFFECTS ON THE CHILD'S OR YOUTH'S EMOTIONAL WELL-BEING IF THE CHILD OR YOUTH IS REMOVED FROM THE CAREGIVER'S HOME.

SECTION 2. In Colorado Revised Statutes, **add** 19-3-702.5 as follows:

19-3-702.5. Periodic reviews. (1) THE COURT SHALL CONDUCT A PERIODIC REVIEW AT LEAST EVERY SIX MONTHS AND, AT THE PERIODIC

REVIEW, SHALL DETERMINE THE FOLLOWING:

(a) WHETHER THE CHILD'S OR YOUTH'S SAFETY IS PROTECTED IN THE PLACEMENT;

(b) WHETHER REASONABLE EFFORTS HAVE BEEN MADE TO FIND SAFE AND PERMANENT PLACEMENT FOR THE CHILD OR YOUTH;

(c) THE CONTINUING NECESSITY FOR AND THE APPROPRIATENESS OF THE CHILD'S OR YOUTH'S PLACEMENT;

(d) THE EXTENT OF COMPLIANCE WITH THE INDIVIDUAL CASE PLAN PURSUANT TO SECTION 19-3-209, AND THE EXTENT OF PROGRESS THAT HAS BEEN MADE TOWARD ALLEVIATING OR MITIGATING THE CAUSES NECESSITATING PLACEMENT OUT OF THE HOME;

(e) A LIKELY TIME FRAME IN WHICH THE CHILD OR YOUTH WILL BE RETURNED TO A PARENT OR LEGAL GUARDIAN OR BE IN A SAFE AND PERMANENT HOME; AND

(f) IF THE CHILD OR YOUTH IS NOT LIKELY TO BE RETURNED TO A PARENT OR LEGAL GUARDIAN WITHIN SIX MONTHS, A FINDING ABOUT WHETHER THE CHILD OR YOUTH IS IN A POTENTIAL PERMANENT PLACEMENT AND IF NOT, A LIKELY TIME FRAME WHEN HE OR SHE WILL BE IN A SAFE AND PERMANENT HOME.

SECTION 3. In Colorado Revised Statutes, **repeal** 19-3-703.

SECTION 4. In Colorado Revised Statutes, 19-1-115, **amend** (4)(c) and (6.7) as follows:

19-1-115. Legal custody - guardianship - placement out of the home - petition for review for need of placement. (4) (c) The court shall review any decree or, if there is no objection by any party to the action, the court may, in its discretion, require an administrative review by the state department of human services of any decree entered in accordance with this subsection (4) each six months after the initial review provided in ~~paragraph (a) of this subsection (4)~~ SUBSECTION (4)(a) OF THIS SECTION. In the event that an administrative review is ordered, all counsel of record ~~shall~~ MUST be notified and may appear at said review. Periodic reviews ~~shall~~ MUST include

the determinations and projections required in ~~section 19-3-702 (6)~~ SECTION 19-3-702.5.

(6.7) Any time the court enters an order related to out-of-home placement pursuant to ~~paragraphs (a), (b), and (c) of subsection (6)~~ SUBSECTIONS (6)(a), (6)(b), AND (6)(c) OF THIS SECTION or ~~paragraph (b) of subsection (6.5)~~ SUBSECTION (6.5)(b) of this section; ~~paragraph (f) of subsection (8)~~ SUBSECTION (8)(f) of this section; section 19-2-508 (3)(a)(VII)(A) and (3)(a)(VII)(B); section 19-2-906.5 (1)(a), (1)(b), and (3)(a)(III); or ~~section 19-3-702 (3.5)(b) and (6)(a)(II)~~ SECTIONS 19-3-702 (3)(b) AND 19-3-702.5 (1)(b), the order ~~shall be~~ IS effective as of the date the findings were made by the court, notwithstanding the date that a written order may be signed by the court. Written orders entered pursuant to ~~paragraphs (a), (b), and (c) of subsection (6)~~ SUBSECTIONS (6)(a), (6)(b), AND (6)(c) OF THIS SECTION or ~~paragraph (b) of subsection (6.5)~~ SUBSECTION (6.5)(b) of this section; ~~paragraph (f) of subsection (8)~~ SUBSECTION (8)(f) of this section; section 19-2-508 (3)(a)(VII)(A) and (3)(a)(VII)(B); section 19-2-906.5 (1)(a), (1)(b), and (3)(a)(III); or ~~section 19-3-702 (3.5)(b) and (6)(a)(II) shall~~ SECTIONS 19-3-702 (3)(b) AND 19-3-702.5 (1)(b) MUST state "the effective date of this order is" and ~~shall~~ MUST not use the words "nunc pro tunc".

SECTION 5. In Colorado Revised Statutes, **amend** 19-3-104 as follows:

19-3-104. Hearings - procedure. ~~Except for proceedings held pursuant to section 19-3-703,~~ Any hearing conducted pursuant to this ~~article~~ ARTICLE 3 in a county designated pursuant to section 19-1-123 regarding a child who is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2) ~~shall~~ MUST not be delayed or continued unless good cause is shown and unless the court finds that the best interests of the child will be served by granting a delay or continuance. Whenever any such delay or continuance is granted, the court shall set forth the specific reasons necessitating the delay or continuance and shall schedule the matter within thirty days after the date of granting the delay or continuance. If appropriate, in any hearing conducted pursuant to this ~~article~~ ARTICLE 3 in a county designated pursuant to section 19-1-123 regarding a child who is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the court shall include all other children residing in the same household whose placement is subject to

determination pursuant to this ~~article~~ ARTICLE 3.

SECTION 6. In Colorado Revised Statutes, 19-7-101, **amend** (1)(p) as follows:

19-7-101. Legislative declaration. (1) The general assembly finds and declares that youth in foster care, excluding those in the custody of the division of youth services or a state hospital for persons with mental health disorders, should enjoy the following:

(p) Consulting with the court conducting the youth's permanency hearing, in an age-appropriate manner, regarding the youth's permanency plan, pursuant to ~~section 19-3-702 (3.7)~~ SECTION 19-3-702 (1)(a);

SECTION 7. In Colorado Revised Statutes, 26-5-110, **amend** (2)(b) introductory portion, (2)(b)(II), and (2)(b)(III) as follows:

26-5-110. Guardianship assistance program - legislative declaration - eligibility - rules. (2) There is established a guardianship assistance program in the state department, referred to in this section as the "program". Assistance from the program is available when a court has determined that adoption and reunification with the child's or children's parent or legal guardian are not appropriate permanency options for the child or children. Program assistance is available in the following situations:

(b) To a certified foster parent or parents who do not otherwise qualify for the program pursuant to ~~paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) if:

(II) The dependency and neglect court finds that the child or children have a substantial psychological tie to the certified foster parent or parents, such that it would be seriously detrimental to the child's or children's emotional well-being to remove the child or children from the certified foster parent's or parents' care, as described in ~~section 19-3-702 (5)(a)(III) and (5)(b), C.R.S.~~ SECTION 19-3-702 (4)(e)(III);

(III) Adoption and reunification are not appropriate permanency options for the child or children, and the dependency and neglect court finds, pursuant to ~~section 19-3-702 (5)(a)(III), C.R.S.,~~ SECTION 19-3-702 (4)(e)(III) that the child's or children's certified foster parent or parents are

unable to adopt the child because of exceptional circumstances, which do not include an unwillingness to accept legal responsibility for the child, but they are willing and capable of providing the child with a stable and permanent environment;

SECTION 8. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED May 20, 2019 at 5:28 p.m.
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

wallace, jennifer

From: miller, dave
Sent: Wednesday, July 10, 2019 2:01 PM
To: wallace, jennifer
Cc: welling, craig
Subject: RE: Juvenile Rules Meeting Tomorrow

Thank you JJ-

That certainly is an interesting idea. I don't think there are any "loop ins" that discovery needs to do with the other sections at this point.

Full disclosure: My information is third hand as I transferred from the presider role and the JV docket in January, but I have heard from a couple people on my rules committee that they wish they had them in place because there are still judges making it up on the fly or trying to artificially fit the Rules of Civil Procedure into the juvenile context. I have most recently heard this from Joe Pickard on my committee who is a private RPC who gets around the state quite a bit.

In our jurisdiction , our bench simply "adopted" the proposed rules pending Supreme Court action, so it isn't affecting us greatly.

What I am hearing is the rules are needed more now than even when we first began because the cases are getting far more litigious since the advent of the state RPC office a couple years ago.

From: wallace, jennifer
Sent: Wednesday, July 10, 2019 10:48 AM
To: miller, dave
Cc: welling, craig
Subject: RE: Juvenile Rules Meeting Tomorrow

Judge Miller-

Judge Welling is the new chair of the committee. I've cc'd him on this email so you'll have his contact information, and he'll be aware of your feedback.

There's mostly house-keeping matters left before finalization, so I don't think it will take too long provided those matters don't drag on. But I can't say that overall adoption will be a quick process. There will likely be a six-month process of making the recommendation to the court, the court publishing the proposal and accepting written public comments, and after publishing the written comments, the court is likely to hold a public hearing on the rules. After a public hearing, it's not uncommon for the supreme court to send back the proposed rules to the committee with comments on changes the committee should think about before adoption (although this might not happen).

It's interesting to hear your feedback that discovery matters are becoming litigious. Given this timeline, is it to the point where you think the committee should consider advancing adopting the disclosure/discovery rule before the other rules?

J.J.

From: miller, dave
Sent: Wednesday, July 10, 2019 10:36 AM
To: wallace, jennifer
Subject: RE: Juvenile Rules Meeting Tomorrow

Hi Jennifer-

I am sorry, but forgot who the new chair is replacing Judge Ashby.

Do you know if we have a projected date as to when we are going to get the rules "finalized" and to the Supreme Court?

Do you have any sense as to how long it might take at that point?

I have had several folks ask- particularly when it comes to discovery as the JV practice is unfortunately getting more litigious.
