AGENDA
COLORADO SUPREME COURT
RULES OF JUVENILE PROCEDURE COMMITTEE

Friday, March 15, 2019, 9:00 AM
Court of Appeals Full Court Conference Room 3rd 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 2/1/19 meeting minutes

III. Old Business
A. Review Present C.R.J.P 1 through 4.5
1. D&N specific C.R.J.P. 2.1 (appointment of counsel)-draft emailed separately
2. D&N specific C.R.J.P. 2.3 (emergency orders)-*see* draft from Mag. Spangler
3. C.R.J.P. 2.4 (magistrates)-*see* memo
4. C.R.J.P. 4.5 (contempt)-integrate rule and statute-*see* attached
5. C.R.J.P. 4.3 (jury trial)-*see* memo

B. Reaching Consensus: Revisiting Matters Left Unresolved at Previous Meetings
1. Default? Yes or No
2. Continued (Deferred) Adjudications-draft may be emailed separately
3. Mini Termination Rule-Update from Sheri Danz

IV. Any New Business?

V. Adjourn
A. Next Meeting: May 3, 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, 18127196#** (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 February 1, 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	
Howard Bartlett		X
Jennifer Conn		X
Sheri Danz	X	
Traci Engdol-Fruhwirth		X
Judge David Furman	X	
Ruchi Kapoor	X	
Andi Truett for 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
Judge 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) 12/7/18 Draft Meeting Minutes
(2) Present C.R.J.P.
(3) Unresolved issues history

II. Chair's Report

A. The 12/7/18 meeting minutes were approved without amendment.

B. The chair announced that, upon her retirement in May, Judge Welling of the Colorado Court of Appeals will take over as chair of the committee.

III. Old Business

A. Review of Present C.R.J.P

1. The chair began the discussion with C.R.J.P. 1 (Scope) and the committee discussed whether the rules should maintain one scope for all rule areas or whether each subject area (D&N, delinquency, adoption, etc.) should have its own scope. The committee agreed that one scope/applicability rule may be appropriate for general juvenile purposes (e.g. "These rules govern proceedings brought in the juvenile court under Title 19, 8B C.R.S. (1987 Supp.), also hereinafter referred to as the Children's Code"), but that the rest of Rule 1 (applying the C.R.C.P. to civil cases and the Crim. P. to delinquency cases) should be delegated to the applicable subject areas and each subject area may need its own scope.

The committee also briefly discussed the reference to the civil rules in the current Rule 1. The committee felt that some incorporation of specific civil rules may be appropriate because there is no specific need for different procedures in juvenile cases (one member specifically mentioned the procedures for noticing and setting a deposition). However, the committee felt that the juvenile rules should specify when civil rules are being incorporated and not leave open the application of all civil rules.

This led to a general discussion of the structure of the present rules: Part 1 (applicability); Part 2 (general provisions); Part 3 (delinquency); Part 4 (D&N); Part 5 (UPA); Part 6 (adoption & relinquishment); & Part 7 (support). The committee felt that Parts 1 & 2 will need restructuring and revisiting throughout this process of revising the rules. Many rules in part 2, e.g. appointment of counsel, will be taken up in the different subject areas because the procedure is different depending on the subject area. Ruchi Kapoor indicated that her office began looking at a new rule 2.1 in the D&N context but needed more time to examine practices in different jurisdictions. She stated she may have something for the committee to look at in March.

2. Rule 2.3 Emergency Orders

After discussion, the committee agreed that an emergency orders rule is useful. General feeling was that this rule fills a gap in the statutes and provides procedures for the court to handle emergency situations ex parte (not involving custody, which is sufficiently covered by sections 19-3-403 and -405). Committee members felt the rule served a useful purpose because the court's emergency procedures are difficult to parse out from present statutes. Some committee members felt that the rule could further clarify

emergency procedures by, for example, providing a mechanism/time period for a return after an ex parte order is issued. The committee also agreed that the nature and character of these kinds of orders are different in D&N cases than they are in delinquency cases, so the committee suggests taking the D&N portion of the rule out of the general provisions section and making the rule D&N specific. Other committee members are also aware of legislation that is in fiscal notes that would impact this provision in the delinquency context. The committee will keep that in mind when delinquency is taken up.

The committee would like more information from stakeholders on how this rule in used. J.J. Wallace will email a Word document of the current rule to some committee members to circulate to their stakeholders seeking feedback.

3. Rule 2.4 Magistrates

C.R.J.P. 2.4's language is the exact same as in C.R.M. 5(f), titled "General Provisions." J.J. Wallace will research the adoption of this language in the rules before the next meeting to provide more information on whether this language remains necessary for the C.R.J.P.

4. Rule 4.5 Contempt

Committee members noted that section 19-3-504 authorizes contempt in certain circumstances. But committee members felt that incorporating C.R.C.P. 107 (with shorten time frames) as provided in the current rule is useful to curb extreme circumstances not covered by the statute, e.g., threats of harm to a caseworker or GAL. There was a suggestion that the rule could address any confusion between the statute and the rule.

5. Rule 4.3 Jury Trials

The committee agreed that there are difficulties with the rule as written which causes unfair allocations of peremptory challenges and that the rule should be modified. The rule gives peremptory challenges to respondents, GALs, and the Petitioner. Often respondents are not aligned and the GAL and the petitioner are aligned. Or a group of children will have several different GALs and the children's interests are not aligned. Because there are often uneven numbers of parties, some of which align, but some of which don't, the peremptory challenges can be weighted to the advantage of one side. The committee feels that the solution to this problem is to give the trial judge discretion to allocate the peremptory challenges in a manner that is fair. The committee also feels that the total number of peremptory challenges should not be increased.

J.J. Wallace will research other states' rules and provide examples to the committee of what other states do.

IV. New (Yet Old) Business

A. Reaching Consensus: Revisiting Matters Left Unresolved at Previous Meetings

1. Default vs. Non-Appearing Party Rule

The committee members agreed that default in a dependency and neglect case is not a best practice and no members of the committee used it. One member mentioned that even under the civil rules default requires evidence, so the member did not see default being more useful or easier than the non-appearing party rule. Committee members did not want to encourage use of default and felt that adopting a default rule would encourage it. One committee member noted that not having a default rule would not preclude parties from using default. Another member felt that the default procedure had no benefit in a dependency and neglect case. David Ayraud, co-chair of the adjudication subcommittee that drafted these rules, mentioned that some counties do use default. Default has also been addressed in case law.

The committee decided to frame the issue for a yes/no decision: Does the committee want to recommend to the supreme court that the default procedure be available in dependency and neglect cases? The chair asked members to reach out to stakeholders and practitioners for feedback on using default procedures in the expectation that a final yes/no decision will be made at the March meeting.

2. Continued (Deferred) Adjudications

No member of the committee had experience using a split process. The committee agreed to add language to the advisement section of the rule that all parties, including the child, must be advised of the proposed terms and conditions of the continuance (deferral). The committee also felt that the rule should specify procedures for amending the terms and conditions of the continuance (deferral). Committee members volunteered to work on updating the rule with the additional language for the next meeting. J.J. Wallace will email them rule.

3. Intervention Rule

The intervention rule was modified to reflect the phrasing of the statute.

4. One Evidence Rule or Evidence in Applicable Rules

J.J. Wallace will email subcommittee chairs the two rules where evidence is mentioned. The committee chair asked the subcommittee chairs to put on their subcommittee hats and see if any additions were needed.

5. Mini Termination Rule

With the newly framed understanding that the committee will be advising the supreme court whether it should adopt procedures, Sheri Danz will email her subcommittee members and reexamine the issue with this framework in mind.

6. Keep Rules Self-Contained vs. Refer to the C.R.C.P.

Resolved in previous discussion. *See* (III)(A)(1) above.

V. Adjourn

The next meeting is scheduled for March 8th. However, many committee members indicated that they had an appellate training that day. J.J. Wallace will send a poll email to all committee members to see which date works better for the next meeting: March 8th or March 15th. She will notify committee members which meeting date works for the most people via email.

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Respectfully Submitted,
J.J. Wallace

Colorado Rules of Juvenile Procedure 2.3

(a) On the basis of a report that a child's or juvenile's welfare or safety may be endangered, and if the court believes action is reasonably necessary, the court may issue an ex parte order.

(b) Where the need for emergency orders arises, and the court is not in regular session, the judge or magistrate may issue such orders orally, by facsimile, or by electronic filing. Such orders shall have the same force and effect**.** Oral orders shall be followed promptly by a written order entered on the first regular court day thereafter.

(c) Any time when a child or juvenile is subject to an emergency order of court, as herein provided, and the child or juvenile requires medical or hospital care, reasonable effort shall be made to notify the parent(s), guardian, or other legal custodian for the purpose of gaining consent for such care; provided, however, that if such consent cannot be secured and the child's or juvenile's welfare or safety so requires, the court may authorize needed medical or hospital care.

(d) (1) ***A hearing must be held within 72 hours excluding weekends and holidays to review all written Ex Parte protection or custody orders issued pursuant to C.R.S. 19-3-405 and C.R.S. 19-3-114. All parties to the case shall be given notice of the hearing in accordance with these rules.***

(2) For protection orders issued for a child who has run away from placement pursuant to C.R.S. 19-1-113 a hearing must be set in accordance with the requirements of C.R.S. 19-1-113 (4)

To: Rules of Juvenile Procedure Committee
From: J.J. Wallace
RE: 2/1/19 Meeting Request for More Information-Rule 2.4 Limitation on Authority of Juvenile Magistrates
Date: 3/15/19

Background

In reviewing the present C.R.J.P. at the last meeting, the question arose whether Rule 2.4-Limitation on Authority of Juvenile Magistrates-remained necessary. The committee asked me to look into the history of Rule 2.4 and its relationship with the C.R.M. and the juvenile magistrate statute, section 19-1-108, C.R.S. (2018), in order to provide more background information to decide whether Rule 2.4 should be included with the proposed new rules.

Summary

My research is inconclusive. I did not find any explanation for the supreme court's adoption of C.R.J.P. 2.4. I also did not find an explanation for why the same language limiting the magistrate's authority appears in both C.R.J.P. 2.4 and C.R.M. 5(f). Although I struck out in finding an explanation, I have compiled some general information on the rules and statutes covering magistrates for the committee.

History of the Rules

Rule 2.4 was adopted by the supreme court on February 3, 1994. *See* Colorado Supreme Court Rule Change 1994(5). On the same day, C.R.M. 5 was amended to include a new paragraph (f), which is the same language that is found in Rule 2.4. *See* Colorado Supreme Court Rule Change 1994(4). Both rules prevent magistrates from determining whether a law is constitutional but allows constitutional questions to be raised on review of the magistrate's order. My research did not make it clear to me why the supreme court adopted the new language or why the same language appears in two places. This language does not appear in any statute, so the prohibition on magistrates determining constitutional questions comes solely from court rule.

The Civil Rules Committee oversees the Magistrate Rules. I reviewed the Civil Rules Committee's meeting minutes from late 1992 to just after C.R.M. 5(f) and C.R.J.P. 2.4 were adopted. The Civil Rules Committee never discussed these rule changes, so no insight was found there.

I also searched through the Supreme Court Library's archives of committee information and rule changes. I found one folder on the 1994 rule changes, but no explanation of why the changes were adopted and no explanation of why it was needed in two places.

When Rule 2.4 was added in 1994, the magistrate rules seemed to apply to juvenile magistrates. *See* C.R.M. 2 (1991):

Rule 2. Application

These rules apply to all proceedings conducted by ~~referees~~ MAGISTRATES in district courts, county courts, small claims courts, Denver Juvenile Court and Denver Probate Court, as authorized by law, except for proceedings conducted by water referees, as defined in Title 37, Article 92, C.R.S., and proceedings conducted by masters governed by C.R.C.P. 53.

C.R.M. 2's language remains the same today.

Some references to juvenile magistrates in the magistrate rules have changed since 1994. In 1994, there was a separate rule covering juvenile magistrates. *See* C.R.M. 8 (1991). The rule authorized chief judges, with the approval of the chief justice, to appoint a magistrate to serve the court under the provisions of section 19-1-108, C.R.S. (2018):

Rule 8. Juvenile Court ~~Commissioner~~ MAGISTRATES

With the approval of the chief justice of the supreme court, a chief judge or the presiding judge in the Denver Juvenile Court may appoint by written order one or more juvenile court ~~commissioners~~ MAGISTRATES to serve the court. Juvenile court ~~commissioners~~ MAGISTRATES shall have all of the powers and be subject to the limitations prescribed for juvenile court ~~commissioners~~ MAGISTRATES by the provisions of Title 19, Article 1, C.R.S., and proceedings conducted by juvenile court ~~commissioners~~ MAGISTRATES shall be governed by the provisions of Title 19, C.R.S.

In 1999, the magistrate rules were overhauled. *See also* Richard P. Holme, *Proposed Magistrate Rules: Crucial to Civil Litigators*, 28 Colorado Lawyer 51 (August 1999) (explaining the history of reexamining the magistrate rules). C.R.M. 8 (1991) on juvenile court magistrates was moved into C.R.M. 6(d) (1999):

(d) Functions in Juvenile Cases: A juvenile court magistrate shall have all of the powers and be subject to the limitations prescribed for juvenile court magistrates by the provisions of Title 19, Article 1, C.R.S., and proceedings conducted by juvenile court magistrates shall be governed by the provisions of Title 19, C.R.S.

It remains there today.

The Statutes

Section 13-5-201, C.R.S. (2018), authorizes district court magistrates.[1] The statute specifies that district court magistrates may solemnize marriages and handle motions filed by inmates in civil lawsuits. *Id.* Other than prohibiting magistrates from presiding over jury trials, the statute largely defers determination of the kinds of matters magistrates can hear to the supreme court rules process. § 13-5-201(3) ("District court magistrates may hear such matters as are determined by rule of the supreme court."). For district court magistrates, the magistrate rules describe the general powers of magistrates (C.R.M. 5), the functions of magistrates by case type and whether or not consent to the magistrate is necessary (C.R.M. 6), and procedures for review of magistrates' decisions (C.R.M. 7).

The statutory authorization for juvenile court magistrates, section 19-1-108, is more specific than the statute on district court magistrates. The juvenile magistrate statute does not leave the general powers of juvenile magistrates, juvenile magistrates' functions, how consent works, and how review works to the supreme court rules process alone.[2] The statute itself sets out these things. But, the C.R.M. have been cited by the supreme court in cases involving juvenile magistrates to fill in the statute's gaps. *See, e.g.*, *People in Interest of S.X.G.*, 2012 CO 5, ¶ 3 (determining that section 19-1-108(5.5) and C.R.M. 7(a)(11) require the district court to first review a suppression order of the magistrate before the supreme court has jurisdiction to review the merits of the suppression ruling on interlocutory appeal); *People in Interest of R.A.*, 937 P.2d 731, 737 (Colo. 1997) (relying on the clearly erroneous standard of review set out in [present day C.R.M. 7(a)(9)]).

Conclusion

It seems to me that the magistrate rules apply to magistrates presiding over juvenile matters and having the same language both in the juvenile rules and in the magistrate rules is unnecessary. However, I'm sure there was a reason that the court adopted the language in both places (notwithstanding my inability to discern it). A safe approach would be to leave the language in both places.

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[1] There are several statutes authorizing different kinds of magistrates, but to focus the issue, in this memo I only discuss the district court magistrate statute. *See, e.g.*, § 13-6-501 (authorizing county court magistrates, particularly for presiding over traffic matters); § 13-6-405 (magistrates in small claims court).

[2] Unlike the district court magistrate statute, there is no specific reference to rules adopted by the supreme court in the juvenile magistrate statute. *Compare* § 13-5-201(3) ("District court magistrates may hear such matters as are determined by rule of the supreme court.") *with* § 19-1-108(3)(a.5) ("Magistrates shall conduct hearings in the manner provided for the hearing of cases by the court.").

Rule 4.5. Contempt in Dependency and Neglect Cases.

The citation, copy of the motion, affidavit, and order in contempt proceedings pursuant to C.R.C.P. 107, shall be served personally upon any respondent or party to the dependency and neglect action, at least 14 days before the time designated for the person to appear before the court. Proceedings in contempt shall be conducted pursuant to C.R.C.P. 107, except that the time for service under subsection (c) shall be not less than 14 days before the time designated for the person to appear.

19-3-504. Contempt – warrant

(1) Any person summoned or required to appear as provided in section 19-3-503 who has acknowledged service and fails to appear without reasonable cause may be proceeded against for contempt of court.

(2) If after reasonable effort the summons cannot be served or if the welfare of the child requires that he be brought immediately into the custody of the court, a bench warrant may be issued for the respondent or for the child.

To: Rules of Juvenile Procedure Committee
From: J.J. Wallace
RE: 2/1/19 Meeting Request for More Information on Other States' Rules on Peremptory Challenges (C.R.J.P. 4.3(b))
Date: 3/15/19

Background

At the last meeting the Committee agreed that, in some circumstances, C.R.J.P. 4.3(b) as currently written can result in unfair allocations of peremptory challenges. The Committee agreed that the rule should be modified to promote more fairness in the allocation of peremptory challenges but did not have a specific model in mind to achieve fairness. Thus, the Committee asked me to examine other states' rules in this area. I also included Colorado's civil and juvenile rules on peremptory challenges to provide a complete picture.

Re-Cap of Peremptory Challenges in Colorado

C.R.J.P. 4.3(b) states:

> Examination, selection, and challenges for jurors in such cases shall be as provided by C.R.C.P. 47, except that the petitioner, all respondents, and the guardian ad litem shall be entitled to three peremptory challenges. No more than nine peremptory challenges are authorized.

Based on the plain language of this rule, the court of appeals held that the juvenile court does not have discretion to increase the number of peremptory challenges given to each respondent or decrease the number of peremptory challenges given to the Department and the GAL. *People in Interest of J.J.M.*, 2013 COA 159, ¶ 11 ("Had the supreme court, in promulgating the Colorado Rules of Juvenile Procedure, intended to permit the court discretion to give each respondent additional peremptory challenges, the rule could have so provided.").

C.R.C.P. 47(h) states:

> Each side shall be entitled to four peremptory challenges, and if there is more than one party to a side they must join in such challenges. Additional peremptory challenges in such number as the court may see fit may be allowed to parties appearing in the action either under Rule 14 [third party practice] or Rule 24 [intervention] if the trial court in its discretion determines that the ends of justice so require.

C.R.C.P. 47(b) also authorizes the seating of one or two alternate jurors and if alternate jurors are seated, "each side is entitled to one peremptory challenge in addition to those otherwise allowed."

Other States

I was surprised to learn that very few states hold jury trials in dependency and neglect cases. For those that do, I've compiled the rules or statutes on peremptory challenges. Some states have jury trials at the adjudication stage, the termination stage, or both. I've tried to focus on the adjudication stage, but where a state offers a jury trial at the termination stage only, I've included those too. A Virginia statute authorizes an advisory jury to determine disputes of fact in appeals to the circuit court of a district court's decision in dependency and neglect. Va. Code Ann. § 16.1-296 (West 2018). Since this practice is very different from what we use in Colorado, I did not include information from Virginia.

Two features stand out in the schemes that follow as being different from Colorado's approach. First, some schemes recognize that some defendants' interests are not aligned or are adverse and, in such cases, the scheme grants separate peremptory challenges for the defendants. (Michigan, Oklahoma, Wisconsin, Wyoming). Second, some schemes grant the trial judge discretion to rebalance the peremptory challenges. (Michigan, Texas, Wyoming).

(1) Michigan

In Michigan, a statute provides for the right to a jury trial to determine a parent's unfitness. Mich. Comp. Laws Ann. § 712A.17(2) (West 2018). The rule implementing this right is Michigan Court Rule 3.911 (rules for special proceedings). The rule incorporates the regular civil rules for impaneling a jury. Michigan Court Rule 2.511(E), the provision on peremptory challenges in civil cases states:

> **Peremptory Challenges.**
>
> (1) A juror peremptorily challenged is excused without cause.
>
> (2) Each party may peremptorily challenge three jurors. Two or more parties on the same side are considered a single party for purposes of peremptory challenges. However, when multiple parties having adverse interests are aligned on the same side, three peremptory challenges are allowed to each party represented by a different attorney, and the court may allow the opposite side a total number of peremptory challenges not exceeding the total number of peremptory challenges allowed to the multiple parties.
>
> (3) Peremptory challenges must be exercised in the following manner:
>
> (a) First the plaintiff and then the defendant may exercise one or more peremptory challenges until each party successively waives further peremptory challenges or all the challenges have been exercised, at which point jury selection is complete.
>
> (b) A "pass" is not counted as a challenge but is a waiver of further challenge to the panel as constituted at that time.

> (c) If a party has exhausted all peremptory challenges and another party has remaining challenges, that party may continue to exercise their remaining peremptory challenges until such challenges are exhausted.

In a child protection proceeding, this regular civil process is modified by the special proceedings rule so that "each party is entitled to 5 peremptory challenges, with the child considered a separate party." Michigan Court Rule 3.911(C)(2)(a).

In sum, in Michigan, each side of a case is considered a single party. Each party/side gets 5 peremptory challenges. If the parties on the same side have adverse interests and different attorneys, then the court may grant 5 individual peremptory challenges to each of the parties on the same side, but the court may grant the opposite side additional peremptory challenges (not exceeding the total number of peremptory challenges allowed to the multiple parties on the opposing side). The child is always considered his or her own party and is never considered aligned with another party/side.

(2) Oklahoma

In Oklahoma, a statute grants parents the right to a jury trial to determine whether parental rights should be terminated. Okla. Stat. tit. 10A, § 1-4-502 (West 2018). Procedures applicable to civil jury trials apply and, in civil cases, the legislature has granted plaintiffs and defendants 3 peremptory challenges each. Okla. Stat. tit. 12, § 573 (West 2018). When there is more than one defendant and the trial judge determines that there is "a serious conflict of interest," another rule authorizes the court to allow each defendant 3 peremptory challenges. Okla. Stat. tit. 12, § 575.1 (West 2018). The Oklahoma Supreme Court has interpreted this to mean that each of the three sides of the termination case (parents, child, department) are entitled to three peremptory challenges. *See Matter of T.R.W.*, 722 P.2d 1197, 1200 (Okla. 1985). I found cases where the parents asked for separate peremptory challenges (3 each) because their interests were adverse, but all the cases I found affirmed the trial court's denial of separate peremptory challenges because the parents' interests were not truly adverse. *See, e.g.*, *In re A.D.W.*, 12 P.3d 972, 973-74 (Okla. Civ. App. 2000).

In short, Oklahoma's system looks a lot like C.R.C.P. 4.3(b), except that if the parents can show a "serious conflict of interest," they may be entitled to separate peremptory challenges (3 each).

(3) Texas

A statute authorizes jury trials in any case affecting the parent-child relationship. Tex. Family Code Ann. § 105.002 (West 2017). Texas Rule of Civil Procedure 233, applicable to trials in child welfare cases, states as follows:

> Except as provided below, each party to a civil action is entitled to six peremptory challenges in a case tried in the district court, and to three in the county court.

> **Alignment of the Parties.** In multiple party cases, it shall be the duty of the trial judge to decide whether any of the litigants aligned on the same side of the docket are antagonistic with respect to any issue to be submitted to the jury, before the exercise of peremptory challenges.
>
> **Definition of Side.** The term "side" as used in this rule is not synonymous with "party," "litigant," or "person." Rather, "side" means one or more litigants who have common interests on the matters with which the jury is concerned.
>
> **Motion to Equalize.** In multiple party cases, upon motion of any litigant made prior to the exercise of peremptory challenges, it shall be the duty of the trial judge to equalize the number of peremptory challenges so that no litigant or side is given unfair advantage as a result of the alignment of the litigants and the award of peremptory challenges to each litigant or side. In determining how the challenges should be allocated the court shall consider any matter brought to the attention of the trial judge concerning the ends of justice and the elimination of an unfair advantage.

This scheme provides maximum discretion to the trial judge to insure fairness, but it also authorizes a high number of peremptory challenges (6 per party).

(4) Wisconsin

Wisconsin's statute provides for a 6 person jury trial for adjudication and a 12 person jury trial for termination and incorporates the statute on civil jury trials. Wis. Stat. Ann. § 48.31 (West 2017). The civil jury trial statute sets out the following on peremptory challenges:

> Each party shall be entitled to 3 peremptory challenges which shall be exercised alternately, the plaintiff beginning; and when any party declines to challenge in turn, the challenge shall be made by the clerk by lot. The parties to the action shall be deemed 2, all plaintiffs being one party and all defendants being the other party, except that in a case where 2 or more defendants have adverse interests, the court, if satisfied that the due protection of their interests so requires, in its discretion, may allow peremptory challenges to the defendant or defendants on each side of the adverse interests, not to exceed 3. Each side shall be entitled to one peremptory challenge in addition to those otherwise allowed by law if [there are alternate jurors].

Wis. Stat. Ann. § 805.08(3) (2017).

(5) Wyoming

Wyoming authorizes a jury trial for the adjudication and incorporates the law for civil trials. Wyo. Stat. Ann. §§ 14-3-423(b) (Child Protection Act adjudications), 14-6-423(b) (Children in Need of Supervision Act adjudications) (West 2019). The Wyoming statute on peremptory challenges states: "In the trial of civil cases in the district courts of this state, each side is allowed three (3) peremptory challenges." Wyo. Stat. Ann. § 1-11-202 (West 2019). Case law has defined "side" as "litigant or group of litigants having essentially common interests." *Wardell v. McMillan*, 844 P.2d 1052, 1061 (Wyo. 1992). The supreme court explained "multi-party defendants' interests are antagonistic when a good-faith controversy exists, vis-a-vis each other, over an issue of fact which the jury will decide." *Id.* The Wyoming Rule of Civil Procedure 47(e) states: "Each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the making of challenges or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly."