

RULE 2.1. ATTORNEY OF RECORD

(a) Appointment of Counsel [in Article 3 proceedings?]

- 1) An attorney shall be deemed of record when the attorney appears personally before the court, files a written entry of appearance, has been appointed by the court, or appointed by the Office of Respondent Parents' counsel as set out in CJD 16-02.
- 2) If a respondent appears in court without counsel, the court shall advise the respondent of the right to counsel. In an appropriate case, 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 CJD 16-02, an attorney shall be appointed to represent the respondent at every stage of the proceedings.
- 3) The clerk shall notify an attorney appointed by the court. An order of appointment shall appear in the file.

(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. Unless it appears that there is good cause to believe no conflict of interest is likely to arise, the court shall take such measures as may be appropriate to protect each respondent's right to counsel.

(c) Request for Withdrawal of a Lawyer During Proceedings. Except as provided in section (d), withdrawal of a lawyer in a dependency or neglect case is a matter within the sound discretion of the court. In exercising such discretion, the court shall balance the best interests of the children with the respondent's due process rights.

(d) Procedure for Withdrawal During Proceedings.

(1) A lawyer may withdraw from a case only upon order of the court. In the discretion of the court, a hearing on a motion to withdraw may be waived with the consent of the county attorney and the guardian ad litem, and if a written substitution of counsel is filed which is signed by current counsel and future counsel. A request to withdraw shall be in writing or may be made orally in the discretion of the court and shall state the grounds for the request. A request to withdraw shall be made as soon as practicable upon the lawyer becoming aware of the grounds for withdrawal. Advance notice of a request to withdraw shall be given to the respondent before any hearing, if practicable. Such notice to withdraw shall include:

- (I) That the attorney wishes to withdraw;
- (II) The grounds for withdrawal;
- (III) That the respondent has the right to object to withdrawal;
- (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.

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(2) Upon setting of a hearing on a motion to withdraw, the lawyer shall make reasonable efforts to give the respondent actual notice of the date, time and place of the hearing. No hearing shall be conducted without the presence of the respondent unless the motion is made subsequent to the failure of the respondent to appear in court as scheduled.

(e) Termination of Representation.

(1) Unless otherwise directed by the trial court or extended by an agreement between counsel and respondent (or ORPC?), counsel's representation of a respondent, whether retained or appointed, shall terminate at the issuance of a mandate from the court of appeals.

(2) If the trial court terminates jurisdiction over the proceeding, then trial counsel's representation terminates on the date the final order closing the case is signed by the trial court.

Adjudication 4.2.5 Continued (Deferred) Adjudications (revised 2/1/19)

- (a) **Advisement.** Prior to parties consenting to a continued (deferred) adjudication, the respondent must be informed of his or her rights in the proceeding, including the right to have a hearing either dismissing or sustaining the petition, and that he or she is waiving the right to contest their admissions to the allegations of the petition or the factual basis of their admissions. All parties, including the child in a developmentally appropriate manner, must also be advised of the proposed terms and conditions of the continuance (deferral). Once advised, consent to a continued (deferred) adjudication must be given by the State, the child if the child is of sufficient age and understanding, the Guardian *ad litem*, and the Respondent.
- (b) **Findings.** The court must find that an allegation alleged in the petition is supported by a preponderance of the evidence. The court shall specify the facts that support an adjudication, unless the Respondent has waived the factual basis but concedes there is a basis to enter an adjudication.
- (c) **Terms and Conditions.** During the period of continuance (deferral), the court may review the matter from time to time, allowing the child to remain in his or her home or in the temporary custody of another person or agency.
- (1) After consent has been obtained pursuant to subsection-paragraph (a), the court shall adopt terms and conditions for the parties, including but not limited to, a treatment plan, education, visitation, supervision, conditions of conduct, or other requirements as the court may prescribe.
 - (2) Any decree vesting legal custody of a child shall continue to be reviewed pursuant to C.R.S. 19-1-115 during the continued (deferred) adjudication.
- (d) **Amendment of Terms and Conditions.** During the period of continuance (deferral), the court may amend the terms and conditions upon stipulation of the parties or upon finding additional circumstances exist that are or would be injurious to the welfare of the child. Amendment of the Terms and Conditions shall not extend the period of continuance (deferral).
- (e) **Duration of Continuance (Deferral).** The continuance (deferral) of adjudication shall not extend longer than six (6) months. The court shall review the matter and upon review may continue the case for another period not to exceed an additional six (6) months.
- (f) **Entry of Adjudication Following a Continued (Deferred) Adjudication.** At any time a party may move to revoke the continued (deferred) adjudication and enter the adjudication.
- (1) A hearing on the revocation of a continued (deferred) adjudication shall determine, by a preponderance of the evidence, whether the Respondent has failed to comply with the terms and conditions of the continued (deferred) adjudication.
 - (2) If the court determines the Respondent has been noncompliant with the terms and conditions, the Court shall proceed to consider any other relevant factors as required by law in determining whether to enter adjudication and if appropriate issue a written order of adjudication.
 - (3) If the court has adopted a treatment plan as terms and conditions of a continued (deferred) adjudication, such treatment plan shall continue as the

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court's dispositional order following entry of adjudication, unless otherwise ordered by the court.

- Ⓔ(g) **Waiver of Procedural Rights.** A Respondent may waive their right to a hearing or other procedural right, after being advised of the consequences of such waiver.
- Ⓔ(h) **Permanency During and Following Continued (Deferred) Adjudication.** A continued (deferred) adjudication shall not delay or toll any period for permanency as described in part 7 of article 3 of title 19.