

**CASE MANAGEMENT, DUTY TO DISCLOSE,
AND DISCOVERY IN DEPENDENCY AND NEGLECT CASES**

- (a) **Purpose of this Rule.** Dependency and Neglect cases are unique civil cases requiring an intricate balance of the important and interrelated rights and interests of parents, legal guardians and/or legal custodians; children and the guardians *ad litem* who represent their best interests; and the government. The purposes of the Colorado Children’s Code, codified at 19-1-102, C.R.S., include securing for children subject to its provisions such care and guidance, preferably in such children’s own home, as will best serve such children’s interests and serve the interests of society; and preserving and strengthening family ties whenever possible, including improving the home environment. Section 19-1-102, C.R.S. also explains that a child may be removed from the custody of his or her parents only when his or her welfare and safety or the protection of the public would otherwise be endangered; and, in either instance, for courts to proceed with all possible speed to a legal determination that will serve the best interests of the child. In general, the Children’s Code emphasizes rehabilitating parents and/or the home environment so children may be returned home; and, where such return is not possible under the law, to ensure the safe, stable, and secure placement of children in a permanent home. To reach these goals, the Children’s Code sets expedited timeframes deemed to serve the best interests of the children.

These and other such purposes and policies of the Children’s Code render the normal discovery processes found in civil cases, which sometimes involve frequent disputes and inherent delays, unacceptable in Dependency and Neglect cases. It is anticipated that informal disclosure and discovery will continue to occur; these rules are intended to supplement those informal practices. Moreover, nothing in these rules shall be used to justify an extension of statutory timeframes. Further, it is incumbent upon parties and courts to engage in active case management of Dependency and Neglect cases to eliminate delay.

This rule provides a just, timely, and cost-effective process requiring attention to active case management by the court. This rule provides a uniform procedure for resolution of all disclosure and discovery issues in Dependency and Neglect cases in a manner that furthers the purposes and policies of the Children’s Code.

Proceedings are civil in nature. Where not governed by these rules or the procedures set forth in Title 19, proceedings shall be conducted according to the Colorado Rules of Civil Procedure, except where those rules specifically exclude their applicability to juvenile proceedings.

- (b) **Active Case Management.** The court shall provide active case management from the filing of a Petition in Dependency and Neglect to the resolution of all issues before it. The court shall evaluate each case at all stages to determine proper scheduling and actively monitor disclosures and discovery to ensure these processes move fluidly and do not contribute to unnecessary delay, consistent with the purposes and policies of the Colorado Children’s Code. The court shall consider the unique needs of each case and tailor a separate Case Management Order for each case. For the adjudication phase of the

Commented [md1]: This language is largely taken from CRJP 1. It incorporates the ministerial elements of the CRCP (e.g., definition of a deposition, elements of a subpoena) without having to reiterate them here (which previously lead to 24 pages single-spaced).

case, the Case Management Order shall be filed by the Petitioner within 21 days of a child's removal from the home, the petition's filing, or the initial hearing, whichever is earlier, unless extended by the court. Additional Case Management Orders for later parts of the case (e.g., Allocation of parental responsibilities or termination of parental rights) may be required at the discretion of the court; such Case Management Orders shall be filed by the party who requested the hearing within 21 days of the contested hearing or such other deadline as the court may determine. The court may use the Standard Case Management Order in **Appendix 1**. If the court uses a different Case Management Order, its Case Management Order shall, at a minimum, address whether the matter is an Expedited Permanency Planning case, any potential issues related to the Indian Child Welfare Act, any potential issues related to the Uniform Child Custody Jurisdiction and Enforcement Act, any potential issues related to paternity, and any special issues which may affect disclosures and discovery. The Case Management Order may also address the remaining topics outlined in **Appendix 1**.

- (c) **Persons Exempted from Disclosures and Discovery.** (1) Non-parties, and (2) alleged or presumptive parents guardians, or custodians whose legal rights have not been established are exempted from obtaining and providing disclosures and discovery, unless the court orders otherwise. Guardians ad litem are not required to produce discovery unless ordered by the court for good cause shown.
- (d) **Other Case Participants.** Upon request, the court may authorize other case participants to engage in disclosures and discovery.
- (e) **Disclosures.**
 - (1) **Before a Contested Initial Hearing Pursuant to Section 19-3-403, C.R.S.** All parties shall disclose to all other parties as soon as practicable, but no later than prior to the commencement of a contested initial hearing pursuant to 19-3-405, C.R.S., all exhibits it intends to introduce in its case in chief at the contested initial hearing.
 - (2) **After the Initial Hearing.**
 - (A) **By Petitioner.** Upon written request for any or all of the items listed below before a contested trial or a contested hearing, the Petitioner shall disclose to requesting parties the following items in its possession, which relate to the allegations giving rise to the case or are relevant to the contested issue before the court. These disclosures shall be made no later than 21 days after the request is made, or such other time the court determines reasonable and appropriate.
 - (I) Law enforcement reports;
 - (II) Photographs;
 - (III) Interview recordings, notes, and/or transcripts;
 - (IV) Intake assessment summary reports, notes, record of contact sheets, correspondence, and visitation summaries or reports;

- (V) Medical, dental, mental health, substance abuse, and educational documents or information as provided by state or federal law or for which a waiver of privilege or confidentiality has been provided by the privilege holder. See **Appendix 2** for a sample waiver; and
- (VI) Family Safety and Risk Assessments.
- (B) By Respondents.** Upon written request, Respondents shall disclose to requesting parties the following items in their possession. These disclosures shall be made no later than 21 days after the request is made, or such other time the court determines reasonable and appropriate:
 - (I) A copy of the child's birth certificate, social security card, Medicaid/insurance card; and
 - (II) Any information related to a parent's, child's, or other family member's potential Native American heritage; and
 - (III) If the Respondent, Child, or Guardian ad litem holds and waives the child's privilege, then medical, dental, mental health, substance abuse, and educational records of the child or children alleged to be dependent and neglected.
- (3) Evidence for a Contested Trial or Hearing.** Parties and others required by the court in accordance with law shall disclose the following no later than 7 days before a contested trial or contested hearing, or such other time the court determines reasonable and appropriate:
 - (A) Names, addresses, and telephone numbers of all witnesses that will or may be offered at the contested trial or contested hearing, and any written or recorded statements by the witnesses related to their testimony or the case not protected by work product;
 - (B) Curricula vitae, resumé, or statement of the qualifications of each witness who will or may be offered as an expert;
 - (C) Written reports of witnesses who will or may be offered as an expert. If no written report has been prepared, a summary of any expert witness testimony that will be introduced at the contested trial or contested hearing; and
 - (D) A list of all other evidence (including privileged evidence) intended to be presented at the contested trial or contested hearing. Copies of evidence that will or may be offered at the contested trial or hearing shall be provided if not previously disclosed.
- (4) At Other Times.** Disclosures shall be obtained and provided at other times as ordered by the court.
- (f) Discovery.**
 - (1) Scope.** Discovery may be obtained and provided regarding any matter not privileged, relevant to a claim or defense, and proportional to the needs of the case. The court has discretion to limit or expand discovery. Consideration shall be paid to the purposes and policies of the Children's Code; the importance of the issues at stake for which the discovery is sought; the parties' relative access to the

requested information; the parties' resources; and whether the burden, expense, or delay associated with the proposed discovery outweighs its likely benefit.

- (2) **Resolution of Discovery Disputes.** Discovery disputes must be resolved as quickly and informally as possible. When discovery disputes arise, the parties shall schedule a telephone conference with the court. Discovery motions shall not be filed unless requested by the court. However, the parties may file the discovery request and any responses which form the basis of the dispute. The court will exercise due diligence to resolve the discovery dispute within 48 hours of the parties' notice of a dispute, or as soon as practicable.
- (3) **Oral Depositions.** Throughout a case, a party or other person approved by the court in accordance with law may take depositions of four persons. Depositions of incarcerated individuals or repeat depositions of the same person shall not occur without court order. It is presumed that depositions of children are not in their best interests and require a court order supported by good cause shown. Each deposition shall be limited to two hours.
- (4) **Depositions by Written Examination.** Throughout a case, a party or other person approved by the court in accordance with law may take depositions by written examination for the purposes of obtaining or authenticating documents.
- (5) **Requests for Admission.** Throughout a case, a party or other person approved by the court in accordance with law may serve on each adverse party no more than 20 discrete admissions. Complete responses shall be served on the requesting party no later than 21 days after service of the requests, or within the timeframe ordered by the court.
- (6) **Interrogatories.** Throughout a case, a party or other appropriate person approved by the court in accordance with law may serve on each adverse party no more than 20 discrete interrogatories. Complete responses shall be served no later than 21 days after service of the interrogatories, or within the timeframe ordered by the court.
- (7) **Requests for Production.** Throughout a case, a party or other person approved by the court in accordance with law may serve on each adverse party no more than 20 discrete requests for production of documents. Complete response to the requests shall be served no later than 21 days after service of the request, or within the timeframe ordered by the court.

- (g) **Duty to Supplement Disclosures and Discovery.** Unless expressly waived by the receiving party, parties and/or others approved by the court in accordance with law who have provided disclosures or discovery shall supplement disclosures or discovery when such parties and/or others learn that previously-provided disclosures or discovery are incomplete or incorrect in some material respect and the additional or corrective information has not otherwise been made known to the other parties from other disclosures or discovery. The duty to supplement or correct extends to the production of expert reports disclosed pursuant to these rules. Unless expressly waived by the receiving party, updated disclosures and discovery shall be provided as soon as practicable prior to a contested hearing.
- (h) **Sanctions and Other Remedial Measures.** Sanctions and other remedial measures for disclosure and discovery violations must be exercised with careful discretion due to the unique rights, interests, and timeframes involved in Dependency and Neglect cases. Where sanctions and/or remedial measures are appropriate, the court shall exercise caution and impose the sanctions and/or remedial measures with minimal effects to those rights, interests, and timeframes. Courts are encouraged to develop thoughtful case-specific sanctions, taking care to avoid unnecessary delay or disproportionate penalties to the ability to fairly present a case or defense.