

COLORADO RULES OF JUVENILE PROCEDURE

*** THIS DOCUMENT IS CURRENT THROUGH FEBRUARY 1, 2005 ***

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PART ONE -- APPLICABILITY

Rule 1.

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. All statutory references herein are to the Children's Code as amended. Proceedings are civil in nature and where not governed by these rules or the procedures set forth in Title 19, 8B C.R.S. (1987 Supp.), shall be conducted according to the Colorado Rules of Civil Procedure. Proceedings in delinquency shall be conducted in accordance with the Colorado Rules of Criminal Procedure, except as otherwise provided by statute or by these rules.

PART TWO – GENERAL PROVISIONS

Rule 2. Purpose and Construction.

These rules are intended to provide for the just determination of juvenile proceedings. They shall be construed to secure simplicity in procedure and fairness in administration.

Rule 2.1. Attorney of Record.

(a) 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.

(b) The clerk shall notify an attorney appointed by the court. An order of appointment shall appear in the file.

Rule 2.2. Summons -- Service.

(a) When the person to be served cannot be found after due diligence, service may be by a single publication pursuant to C.R.C.P. 4(g).

(b) When the court has acquired jurisdiction over the parties as provided in the Children's Code or pursuant to the Colorado Rules of Civil Procedure, subsequent pleadings and notice may be served on such parties by regular mail.

Rule 2.3. Emergency Orders.

(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.

Rule 2.4. Limitation on Authority of Juvenile Magistrates.

No magistrate shall have the power to decide whether a state constitutional provision, statute, municipal charter provision, or ordinance is constitutional either on its face or as applied. Questions pertaining to the constitutionality of a

state constitutional provision, statute, municipal charter provision, or ordinance may, however, be raised for the first time on review of the magistrate's order or judgment.

PART THREE - DELINQUENCY

Rule 3. Advisement.

(a) At the first appearance before the court, the juvenile and parent, guardian, or other legal custodian shall be fully advised by the court, and the court shall make certain that they understand the following:

- (1) The nature of the allegations contained in the petition;
- (2) The juvenile's right to counsel and if the juvenile, parent, guardian, or other legal custodian is indigent, that the juvenile may be assigned counsel, as provided by law;
- (3) The juvenile need make no statement, and that any statement made may be used against the juvenile;
- (4) The juvenile has the right to a preliminary hearing, as set forth in *Section 19-2-705, C.R.S.*;
- (5) The juvenile's right to a jury trial, as provided by *Section 19-2-107, C.R.S.*;
- (6) That any plea of guilty by the juvenile must be voluntary and not the result of undue influence or coercion on the part of anyone;
- (7) The sentencing alternatives available to the court if the juvenile pleads guilty or is found guilty;
- (8) The juvenile's right to bail as limited by *Sections 19-2-508 and 19-2-509, C.R.S.*, and the amount of bail, if any, that has been set by the court; and
- (9) That the juvenile may be subject to transfer to the criminal division of the district court to be tried as an adult, as provided by *Section 19-2-518, C.R.S.*

(b) If the juvenile pleads guilty to the allegations in the petition, the court shall not accept the plea without first determining that the juvenile is advised of all the matters set forth in (a) of this Rule and also determines that:

- (1) The juvenile understands the nature of the delinquent act alleged, the elements of the offense to which the juvenile is pleading guilty, and the effect of the juvenile's plea;
 - (2) The plea of guilty is voluntary on the juvenile's part and is not the result of undue influence or coercion on the part of anyone;
 - (3) The juvenile understands and waives his or her right to trial, including the right to a jury trial, if authorized by statute, on all issues;
 - (4) The juvenile understands the possible sentencing alternatives available to the court;
 - (5) The juvenile understands that the court will not be bound by representations made to the juvenile by anyone concerning the sentence to be imposed; and
 - (6) There is a factual basis for the plea of guilty. If the plea is entered as a result of plea agreement, the court shall satisfy itself that the juvenile understands the basis for the plea agreement, and the juvenile may then waive the establishment of a factual basis for the particular charge to which the juvenile is pleading guilty.
- (c) If the juvenile pleads not guilty to the allegations in the petition, the court shall set the matter for an adjudicatory trial.

Rule 3.1. Petition Initiation, Form and Content.

(a) A petition concerning a juvenile who is alleged to be delinquent shall be initiated in accordance with Section 19-2-512 and 513, C.R.S.

(b) If the petition is not filed within seventy-two (72) hours (excluding Saturdays, Sundays, and official court holidays) after a juvenile is taken into custody and not released to a parent, guardian or legal custodian, said juvenile shall be released upon order of court; provided that upon application to the court by the district attorney or any interested party and for good cause shown, the above time period may, in the discretion of the court, be extended for a reasonable period of time to be fixed by said court.

Rule 3.2. Responsive Pleadings and Motions.

(a) No written responsive pleadings are required. Jurisdictional matters of age and residence of the juvenile shall be deemed admitted unless specifically denied.

(b) Any defense or objection which is capable of determination without trial of the general issues may be raised by motion.

(c) Defenses and objections based on defects in the institution of the action or in the petition, other than it fails to show jurisdiction in the court, shall be raised only by motion filed prior to the entry of a plea of guilty or not guilty. Failure thus to present any such defense or objection constitutes a waiver, but the court for good cause shown may grant relief from the waiver. Lack of jurisdiction shall be noticed by the court at any time during the proceedings.

(d) All motions shall be in writing and signed by the moving party or his counsel, except those made orally by leave of court.

(e) A request for waiver of jurisdiction to the district court for criminal proceedings shall be in writing and filed within thirty days of the initial advisement. Upon application to the court by the district attorney, and for good cause shown, a request may, in the discretion of the court, be filed at any time prior to the adjudicatory trial.

Rule 3.3. Discovery.

Disclosure by the prosecution and by the juvenile to the prosecution shall be governed by Crim. P. 16. "Prior criminal convictions" shall include juvenile adjudications.

Rule 3.4. Court Order for Nontestimonial Identification.

Any request for a court order for nontestimonial identification shall be governed by Crim. P. 16 and Crim. P. 41.1.

Rule 3.5. Jury Trial.

(a) In any action in delinquency in which a juvenile is alleged to be an aggravated juvenile offender, as described in *section 19-2-516, C.R.S.* or is alleged to have committed an act that would constitute a crime of violence, as defined in *section 16-11-309, C.R.S.*, if committed by an adult, the juvenile or the district attorney may demand a trial by a jury of not more than six persons except as provided in *section 19-2-601(3)(a), C.R.S.*, or the court, on its own motion, may order a jury trial, with the exception that a juvenile is not entitled to a trial by jury when the petition alleges a delinquent act which is a misdemeanor, a petty offense, a violation of a municipal or county ordinance, or a violation of a court order. When requesting a jury trial pursuant to this rule, a juvenile is deemed to have waived the right to have an adjudicatory trial within 60 days and is subject instead to an adjudicatory trial within 6 months. Unless a jury is demanded pursuant to subsection (1) of *section 19-2-107, C.R.S.*, it shall be deemed waived.

(b) Examination, selection, and challenges for jurors shall be as provided by C.R.C.P. 47, except that the grounds for challenge for cause shall be as provided by Crim. P. 24.

Rule 3.6. Probation Revocation.

Revocation of probation proceedings shall be governed by Crim. P. 32(f).

Rule 3.7. Detention.

(a) The chief judge in each judicial district or the presiding judge of the Denver juvenile court shall designate a person(s) as officer(s) of the court with authority to determine whether a juvenile taken into temporary custody should be released to a parent, guardian, or other legal custodian, or admitted to a detention or shelter facility pending notification to the court and a detention hearing.

(b) The court shall maintain control over the admission, length of stay, and release of all juveniles placed in shelter or detention, except for admission into detention pursuant to *Section 19-2-508 (3)(c), C.R.S.*

Rule 3.8. Status Offenders.

Juveniles alleged to have committed offenses which would not be a crime if committed by an adult (i.e., status offenses), shall not be detained for more than 24 hours excluding non-judicial days unless there has been a detention hearing and judicial determination that there is probable cause to believe the juvenile has violated a valid court order. A juvenile in detention alleged to be a status offender and in violation of a valid court order shall be adjudicated within 72 hours exclusive of non-judicial days of the time detained. A juvenile adjudicated of being a status offender in violation of a valid court order may not be disposed to a secure detention or correctional placement unless the court has first reviewed a written report prepared by a public agency which is not a court or law enforcement agency. The report shall address the juvenile's behavior and the circumstances which brought the juvenile before the court and shall assess whether all less restrictive dispositions have been exhausted or are clearly inappropriate. The court is not bound by the recommendations contained in the report. Nothing herein shall prohibit the court from ordering the placement of juveniles in shelter care where appropriate, and such placement shall not be considered detention within the meaning of this rule. Juveniles alleged to have violated *C.R.S. 18-12-108.5* or adjudicated delinquent for having violated *C.R.S. 18-12-108.5* are exempt from the provisions of this rule.

PART FOUR -- DEPENDENCY AND NEGLECT

Rule 4. Petition Initiation, Form and Content.

(a) A petition concerning a child who is alleged to be dependent and neglected shall be initiated in accordance with *Section 19-3-501, C.R.S.*, and shall be in the form set forth in *Section 19-3-502, C.R.S.* Said petition shall be filed within ten working days from the day a child is taken into custody, unless otherwise directed by the court.

Rule 4.1. Responsive Pleadings and Motions.

(a) No written responsive pleadings are required. Jurisdictional matters of age and residence of the child which shall be deemed admitted unless specifically denied.

(b) Any defense or objection which is capable of determination without trial of the general issues may be raised by motion.

(c) Defenses and objections based on defects in the institution of the action or in the petition, other than it fails to show jurisdiction in the court, shall be raised only by motion filed prior to the entry of an admission or denial of the allegations of the petition. Failure to present any such defense or objection constitutes a waiver, but the court for good cause shown may grant relief from the waiver. Lack of jurisdiction shall be noticed by the court at any time during the proceeding.

(d) All motions shall be in writing and signed by the moving party or counsel, except those made orally by leave of court.

Rule 4.2. Advisement -- Dependency and Neglect.

(a) At the first appearance before the court, the respondent(s) shall be fully advised by the court as to all rights and the possible consequences of a finding that a child is dependent or neglected. The court shall make certain that the respondent(s) understand the following:

- (1) The nature of the allegations contained in the petition;
- (2) As a party to the proceeding, the right to counsel;
- (3) That if the respondent(s) is a parent, guardian, or legal custodian, and is indigent, the respondent may be assigned counsel as provided by law.
- (4) The right to a trial by jury;
- (5) That any admission to the petition must be voluntary;
- (6) The general dispositional alternatives available to the court if the petition is sustained, as set forth in *Section 19-3-508, C.R.S.*;
- (7) That termination of the parent-child legal relationship is a possible remedy which is available if the petition is sustained;
- (8) That if a motion to terminate the parent-child legal relationship is filed, the court will set a separate hearing at which the allegations of the motion must be proven by clear and convincing evidence;
- (9) That termination of the parent-child legal relationship means that the subject child would be available for adoption;
- (10) That any party has the right to appeal any final decision made by the court; and
- (11) That if the petition is admitted, the court is not bound by any promises or representations made by anyone about dispositional alternatives selected by the court.

(b) The respondent(s), after being advised, shall admit or deny the allegations of the petition.

(c) If a respondent(s) admits the allegations in the petition, the court may accept the admission after making the following finding:

- (1) That the respondent(s) understand his or her rights, the allegations contained in the petition, and the effect of the admission;
- (2) That the admission is voluntary.

(d) Notwithstanding any provision of this Rule to the contrary, the court may advise a non-appearing respondent(s) pursuant to this Rule in writing and may accept a written admission to the petition if the respondent has affirmed under oath that the respondent(s) understands the advisement and the consequences of the admission, and if, based upon such sworn statement, the court is able to make the findings set forth in part (c) of this Rule.

Rule 4.3. Jury Trial.

(a) At the time the allegations of a petition are denied, a respondent, petitioner, the court, or guardian ad litem may demand a jury of not more than six. Unless a jury is demanded, it shall be deemed waived.

(b) 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.

Rule 4.4. Certification of Custody Matters to Juvenile Court.

(a) Any party to a dependency or neglect action who becomes aware of any other proceeding in which the custody of a subject child is at issue shall file in such other proceedings a notice that an action is pending in juvenile court together with a request that such other court certify the issue of legal custody to the juvenile court pursuant to Section 19-1-104(4) and (5), C.R.S.

(b) When the custody issue is certified to the juvenile court, a copy of the order certifying the issue to juvenile court shall be filed in the dependency or neglect case.

(c) When the juvenile court enters a custody order pursuant to the certification, a certified copy of such custody order shall be filed in the certifying court. Such order shall thereafter be the order of the certifying 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 ten 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 ten days before the time designated for the person to appear.

PART SIX -- ADOPTION AND RELINQUISHMENT

Rule 6. Petition in Adoption.

(a) Every petition in adoption shall be verified and shall include the following information:

- (1) All information required by *Section 19-5-208, C.R.S.*;
- (2) A statement detailing why venue is proper;
- (3) A statement as to the factual basis of the child's availability for adoption;
- (4) The name of the person or agency placing the child in the home of petitioner(s) and the date of such placement. If placement is pursuant to court order, a copy of that order shall be attached to the petition;
- (5) If the petition is for a designated adoption, a complete statement as to the facts surrounding the designation;
- (6) A statement by petitioner(s) of any fee charged relative to the adoption and any charges, gifts, charitable contributions, medical expenses, or other consideration or thing of value as may be subject to the approval of the court; and
- (7) A statement as to what, if any, additional charges, gifts, charitable contributions, medical expenses, or other consideration or thing of value that are anticipated to be paid.

(b) At least ten days prior to the hearing on the petition, petitioner(s) shall file with the court the following documentation:

- (1) All documents concerning the child's availability for adoption;
- (2) The consent for adoption and report for adoption, as set forth in *Section 19-5-207, C.R.S.*;

(3) Where adoption of a foreign-born child is sought, the parties must present certified copies of the original documents with certified translations of the documents adjudicating the child as available for adoption;

(4) A statement of fees by counsel itemizing the hourly rate, services provided, and time spent on the case. A statement of fees in any agency adoption shall detail the services provided; and

(5) The report of the county department of social services or licensed child placement agency, as required by law.

Rule 6.1. Service by Publication.

Affidavits in support of motions for service by publication shall be governed by C.R.C.P. 4(h), and shall include a detailed statement of the specific efforts made to locate an absent parent. A single publication is sufficient.

Rule 6.2. Decree in Adoption.

(a) Every decree in adoption shall be in conformance with the Colorado Children's Code, and shall include, but not be limited to:

(1) The name(s) of the adoptive parent(s);

(2) A finding that the court has jurisdiction over the parties and the subject matter of the petition;

(3) A finding that the child is available for adoption; that written consents of all persons, as provided by law, are on file with the court and are valid; that the rights of all parents, whether known or unknown, have been terminated or that such parents have been given notice of a right to a hearing on fitness, pursuant to *Section 19-3-102, C.R.S.*;

(4) A finding that if the termination of parental rights of any party in interest was an issue, the party has been given notice in the time and in the manner provided by law and these Rules; that the party has appeared or is in default; that parental rights should be and are terminated and the reason(s) therefor;

(5) A finding that the petitioner(s) are of good moral character, able to support and educate the child, and have a suitable home;

(6) A finding that the child's mental and physical condition is such that the child is a proper subject for adoption by the petitioner(s); and

(7) The name to be given the child.

(b) The former name of the child shall not be stated in the final decree, pursuant to *Section 19-5-210 (3), C.R.S.*

Rule 6.3. Relinquishment.

Every petition in relinquishment shall contain the following:

(a) All information required by *Section 19-5-103, C.R.S.*;

(b) A statement as to venue being proper; and

(c) A statement if the relinquishment is part of a designated adoption, with particular details as to the designation and whether any fees or costs are being paid by the prospective adoptive parent(s).

(2) Prior to the hearing on relinquishment, a copy of a report shall be filed with the court by a county department of social services or licensed child placement agency detailing the counseling provided to the petitioner(s).

(3) Any motion for service by publication of an absent parent shall be governed by C.R.C.P. 4(h), and an affidavit must accompany the motion detailing what steps have been taken to determine the whereabouts of the absent parent. A single publication is sufficient.

