



C.R.J.P. 4.6

Disclosure and Discovery in D&N Proceedings

The slide features a background image of a person in a dark suit holding a pen over a document. On the left side, there is a detailed image of a bronze statue of Lady Justice, blindfolded and holding scales of justice. The OCR logo is visible in the bottom left corner of the slide. The text 'Session Overview' is prominently displayed in the upper right, followed by a bulleted list of topics.

Session Overview

- Background
- Rule Provisions
- Protections Applicable to Children and Youth
- Practical Application
- Billing Policies Reminder
- Next Steps

GAL/CFY Responsibilities

- GAL/CFY must exercise discovery necessary to provide effective representation and advocate against discovery requests that are unduly burdensome, unreasonable, outside the legal scope of discovery, or made for improper purposes.



CJD 04-06 V.D.1.c



Background

- History of Juvenile Rules Committee
- Discovery Rule Trajectory
- OCR Involvement



Rule 4.6 Provisions

- Purpose
- Active Case Management
- Persons Exempt from Disclosures and Discovery
- Disclosures
- Discovery
- Comments



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Purposes

- Recognize uniqueness of D&N proceedings, need for particularized approach
- Acknowledge the important and interrelated rights of parents/legal guardians and custodians, children/youth, and the government
- Emphasizes the purposes of Children's Code and goal of avoiding unnecessary delay
- Provides a uniform procedure for resolution of all disclosure and discovery in D&N cases that advances purposes of the Code

C.R.J.P. 4.6(a)



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Role of the Court

- **Active case management:** It is incumbent on the court to actively manage D&N cases to eliminate delay, including actively monitoring disclosures and discovery. **C.R.J.P. 4.6(b).**
- **Sanctions and other remedial measures:** Court may exercise its discretion to impose these consistent with purposes of the rule. **C.R.J.P. 4.6(k).**
- **Good cause expansion/limitation:** Court may limit or expand discovery for good cause. **C.R.J.P. 4.6(i)(10).**
- **Protective Orders:** For good cause shown, court may make any order justice requires to protect party/person from annoyance, embarrassment, oppression, undue burden/expense. **C.R.J.P. 4.6(i)(9).**
- **Adjustment of timelines:** In several places, rule acknowledges ability of court to modify timeframes.



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Role of Parties

- Request and disclose/discover
- Follow court orders
- Continue to engage in informal information-sharing
- Attempt to resolve discovery disputes as quickly and informally as possible. Confer/attempt to confer in good faith before bringing a discovery dispute to the court
- When feasible and appropriate, coordinate and consolidate requests with aligned parties



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Exempted and Included Persons from Disclosures and Discovery

Exempted from both disclosure and discovery (unless court orders otherwise):

- Non-parties
- Guardians or custodians whose legal rights have not been established

Court may authorize disclosures/discovery for other participants

- Upon request
- Consistent with purposes and for good cause shown

C.R.J.P. 4.6(c), (d)



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Disclosures- automatic

No later than first appearance after 19-3-403/19-3-217 hearing:

- All parties must disclose:
 - Native American heritage information/documentation
 - UCCJEA-relevant information
 - Information about parentage, custody, guardianship, child support, or protection orders relevant to court's jurisdiction
- Parents must also disclose relative information.

C.R.J.P. 4.6(e)(2), (3)



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Department Disclosures *upon written request*

- Safety and risk assessments
- Relevant TRAILS entries, including ROC notes
- Relevant handwritten notes
- Confirmation of county referrals to service providers
- Reports and notes from FTMs
- Family time assessments, reports, and notes
- Law enforcement reports
- Photographs and videos
- Forensic interviews
- When permitted by law, waiver of privilege or release of confidentiality:
 - Evaluations, treatment records, service provider notes, educational, medical, dental , substance abuse, DV documents/info
 - Other items in department's file if requested with specificity

C.R.J.P. 4.6(f)(1)



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Application

- When to request/not request disclosures
- What to request in disclosures
- Other considerations



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Duty to supplement disclosures

- Parties must provide complete and correct information
- A party who subsequently learns information was not complete or accurate in some material respect at the time it was conveyed, has a duty to supplement disclosures with corrective information that has not otherwise been made known through additional disclosures
- Obligation exists unless waived by the receiving party

C.R.J.P. 4.6(j)



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Respondent Disclosures *upon written request*

- Child/youth's birth certificate
- Child/youth's SS card
- Info related to Medicaid or health insurance coverage

C.R.J.P. 4.6(f)(2)



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Disclosures *for emergency hearings*

For expedited hearings pursuant to 19-3-403 (temporary custody) or 19-3-217 (hearings on emergency orders to restrict family time), a party must disclose:

- All exhibits they intend to introduce
- All witnesses they intend to call in case in chief

C.R.J.P. 4.6(e)(1)



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Disclosures *for contested trial or hearing*

- Witness contact information, summary of anticipated testimony
- List of all exhibits
- Copies of exhibits that have not been previously disclosed
- For experts:
 - All information required for witnesses
 - CV, resume, statement of qualifications
 - Written reports that have been prepared or, if no report, summary of opinion

C.R.J.P. 4.6(g)



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Application

- Considerations for expert witnesses



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Discovery- scope

- Any matter
 - not privileged,
 - relevant to any matter presented to court for resolution of the case, and
 - proportional to the needs of the case
- GALs are not required to produce discovery unless court-ordered for good cause shown
- Children and youth under 12 not required to produce discovery unless court-ordered for good cause shown

C.R.J.P. 4.6(i)(1)



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Resolution of Discovery Disputes

Parties' responsibilities;

- Resolve as quickly and informally as possible
- Good faith conferral/attempt to confer prior to court involvement

Court's Responsibilities

- 48-hour timeframe for court resolution
- Court must exercised due diligence to resolve in timeframe or as soon as practicable

C.R.J.P. 4.6(i)(2)



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Discovery

Throughout a case, a party may serve on each party no more than:

- 20 requests for admission
- 20 discrete interrogatories
- 20 discrete requests for production of documents

Timing:

- Requests must be propounded at least 35 days before a contested hearing.
- Responses must be served on requesting party no later than 21 days after service of requests or within the time agreed to by the parties or ordered by the court.

C.R.J.P. 4.6(i)(3), (6)-(8).



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Application

- General practicalities, how are these propounded, what format is used
- When to request, and of whom
- Tips for requesting and responding
- Cautions



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Depositions

Throughout a case, a party may take up to

- 4 oral depositions
- 4 written depositions

Timeframes:

- All oral and written depositions must be completed at least 21 days before a contested hearing
- Notices for depositions must be provided at least 7 days before the deposition.

Presumption that depo of child/youth is not in their best interests; these require a court order based on good cause shown.

Other protections:

- Party seeking deposition must make good faith effort to schedule at convenient/reasonable time.
- Prior to scheduling/noticing deposition, all parties must confer in good faith to agree on reasonable means of limiting time/expense.
- Depos of incarcerated individuals or repeat depositions of same person require a court order.
- Depos are limited to two hours.

C.R.J.P. 4.6(i)(3-5).



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Application

- Who to depose and when to depose
- How to phrase/ask questions
- When to object to a deposition
- Considerations for depositions of your witnesses/aligned witnesses



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Duty to supplement discovery

- Complete and correct information
- If party learns information discovered was not complete or accurate in material respect at time of conveyance, party must supplement information (that has not been otherwise made known) through additional disclosures or discovery

C.R.J.P. 4.6(j)



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Court's Authority to Expand/Limit Discovery

Court may limit or expand discovery for good cause

Factors such as:

- Purposes of Children's Code
- Case complexity
- Importance of issues at stake
- Parties' alternative access to relevant information
- Importance of discovery in resolving issues before juvenile court
- Whether burden/delay of discovery outweighs its likely benefits.

C.R.J.P. 4.6(i)(10)



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Protective Orders

Court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

Examples of Protective Orders listed in rule:

- Disclosure or discovery may not be had
- Disclosure/discovery be had only on specified terms and conditions
- Different method of discovery
- No inquiry into certain matters, limitation of scope
- No one present except persons designated by the court
- Sealed deposition, only upon order of the court

C.R.J.P. 4.6 (i)(9)



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Sanctions

Court may exercise its discretion to impose sanctions and other remedial measures for disclosure and discovery violations in a manner consistent with purposes outlined in subsection (a).

C.R.J.P. 4.6(k)



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Application

- Experience, ideas for arguing good cause to limit or expand
- When to move for protective orders
- What to ask for in protective orders
- Addressing disclosure violations and/or disputes



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Protections for Children and Youth

Purposes

Discovery exemptions for GALs and children/youth under 12

Privilege

Proportionality and relevance

Presumption that depositions of children and youth are not in best interests

Protective Orders

Expansion or Limitation for Good Cause



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OCR Billing Policies

- OCR will pay for discovery necessary for independent investigation/litigation
- One time discovery costs that exceed \$2,000 require review from staff attorney liaison
- OCR may pay transcript fees as appropriate and necessary for litigation, including deposition transcripts
 - Expedited transcripts require preapproval



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Next Steps

- OCR monitoring of implementation, issues
- Monthly D&N case staffings
- Second Chair Program
- Local CMOs
- Litigation toolkit

