

# RULES OF JUVENILE PROCEEDINGS

## I. SCOPE OF RULES

**1. Scope of Rules and Mandatory Electronic Filing.** — (a) **Scope of Rules.** These rules govern the procedure for all matters in the Family Court pursuant to Chapter 19 of Title 16 and Chapter 1 of Title 14 of the General Laws, known as the Family Court Act. The rules also govern matters pursuant to Chapter 11 of Title 40 of the General Laws pertaining to abused and neglected children and matters pursuant to Chapter 7 of Title 15 of the General Laws pertaining to adoption and termination of parental rights.

These rules shall be known as the Rhode Island Rules for Juvenile Proceedings and may be cited as R.Juv.P.

(b) **Initial Filing.**

(1) *Charging of Offenses* — For delinquency and waywardness cases, the Office of the Attorney General, authorized law enforcement agency, authorized truant officer, or other appropriate person as defined in G.L. 1956 § 14-1-3(2) (hereinafter collectively referred to as the petitioner) shall initiate a juvenile case at the Family Court clerk's office in the county in which the offense was committed by the filing of a petition.

(2) *Filing of Petitions* — For dependency, neglect, abuse, termination of parental rights, and adoption cases, the petitioner shall initiate a juvenile case in the county in which the child resides through electronic filing.

(c) **Mandatory Electronic Filing.** In accordance with Article X of the Rhode Island Supreme Court Rules Governing Electronic Filing, electronic filing is mandatory for subsequent pleadings filed after the initial charging of a Family Court juvenile case by using the Rhode Island Judiciary's (Judiciary) Electronic Filing System.

Except for incarcerated individuals who are self-represented or where a waiver is granted in accordance with Article X, Rule 3(c), all parties are required to use the Judiciary's Electronic Filing System. Self-represented litigants may electronically file documents in accordance with Article X, Rule 3(b) but are not required to do so. The R.Juv.P. must be read in conjunction with Article X, the Rhode Island Judiciary Rules of Practice Governing Public Access to Electronic Case Information, and the Rhode Island Judiciary User Guide for Electronic Filing.

(1) *Definitions.* For further definitions, see Article X, Rule 1(c) of the Rhode Island Supreme Court Rules Governing Electronic Filing.

(A) *Case Management System (CMS).* An electronic document repository database maintained and managed by the Judiciary and administered by the respective courts to track information used to manage the courts' caseload, such as

case numbers, party names and identifiers, attorneys for parties, titles of all documents filed in a case, and all scheduled events in a case.

(B) *Certificate of Service*. Where the R.Juv.P. requires service of a document to be certified by an attorney of record or a self-represented litigant, the following certification may be used:

### **CERTIFICATE OF SERVICE**

I hereby certify that, on the \_\_\_ day of \_\_\_\_\_, \_\_\_:

I filed and served this document through the electronic filing system on the following: \_\_\_\_\_.

The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

I served this document through the electronic filing system on the following: \_\_\_\_\_.

The document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

I mailed or  hand-delivered this document to the attorney for the opposing party and/or the opposing party if self-represented, whose name is \_\_\_\_\_ at the following address \_\_\_\_\_.

/s/ NAME

(C) *Electronic Filing System (EFS)*. An approved Judiciary-wide system for the filing and service of pleadings, motions, and other documents or information via electronic means such as the Internet, a court-authorized remote service provider, or through other remote means to and from the Judiciary's CMS.

(D) *Filing*. Where the R.Juv.P. require a document to be filed in a Family Court case, filing shall mean the electronic transmission of a document in electronic form to or from a court or clerk through the Judiciary's EFS or scanned and filed into the Judiciary's CMS at the clerk's office.

(E) *Notice*. Where the R.Juv.P. require notice to be given, notice shall mean electronic notice using the EFS unless stated otherwise.

(F) *Registered User*. An individual or entity with an assigned username and password authorized by the Judiciary to access and utilize the EFS.

(G) *Rhode Island Judiciary Public Portal (Public Portal)*. An online service provided and maintained by the Judiciary which is the point of entry for electronic access to case information from the Judiciary's database whether at the courthouse or remotely. The database is an electronic collection of court records displayed as a register of actions or docket sheet. The register of actions or docket sheet lists parties, case events, document filings, or other activities in a case set forth in chronological order.

(H) *Service.* Where the R.Juv.P. require a document or information to be served, sent, delivered, or forwarded, the following shall be applicable:

(i) Subpoenas, petitions, or other documents that must be hand-delivered or served in person with a summons shall not be served electronically; and

(ii) All other service or notice within a case shall be electronic using the EFS unless stated otherwise.

(iii) All discovery on a case shall be electronically served using the EFS except when the discovery is of a type which does not lend itself to electronic service (either because it consists of non-conforming documents or is too voluminous), in which case conventional service shall be used.

(I) *Signature.* Where the R.Juv.P. require an electronic signature on any document, the signature shall be reflected as /s/ NAME unless stated otherwise.

(2) *Electronic Filing of Documents. When using the EFS:*

(A) All subsequent pleadings, motions, and other papers, shall be submitted individually with related documents submitted as separate files within the same submission or filing (for example, a motion and memorandum or other supporting attachments or exhibits filed in support of a motion); and

(B) Categories of items such as bills, receipts, invoices, photographs, etc. may be submitted in one attachment.

For specific requirements, see the Family Court's Juvenile Electronic Filing System Guidelines.

(3) *Clerk Review; Acceptance/Rejection Procedure:* Following submission, the Family Court shall timely review the electronically filed document(s) and shall notify the filing party as to whether the filing is accepted or rejected. Upon acceptance, the submitted document(s) shall be entered into the docket of the case and the docket shall reflect the date and time of filing as set forth in Article X, Rule 5(b) of the Rhode Island Supreme Court Rules Governing Electronic Filing. In accordance with Article X, Rule 5(c), grounds for the rejection of a document submitted to the EFS in the Family Court are limited in scope as follows:

(A) Pleadings filed without a conventional signature where required;

(B) Pleadings filed without the required documents as set forth in the Family Court's Juvenile Electronic Filing System Guidelines;

(C) Pleadings not filed in accordance with Rule 1(c)(2);

(D) Documents, including any required documents, attachments, or exhibits, scanned in the wrong orientation, e.g., upside down or backwards;

(E) Documents scanned and filed that are unreadable or illegible;

(F) Documents filed in a fillable portable document format (PDF);

(G) The document filed does not match the selected filing code type;

(H) The document is filed into the wrong case;

(I) The document contains the wrong or incomplete case caption;

- (J) The document is filed with no case identification;
- (K) The document was improperly scanned or uploaded;
- (L) The document name or address for a party exceeds the number of allotted characters;
- (M) The filer added a party or participant that is not configured in the CMS or does not match the information in the case;
- (N) A payment processing error occurred; and/or
- (O) A technical submission error occurred.

If rejected, the filing will not be docketed and notice will be sent to the Registered User indicating why the document(s) was returned. The rejection notice shall identify the basis for the rejection in accordance with the rules of the court. A rejected filing shall be promptly corrected and resubmitted and shall be deemed to have been submitted and filed on the initial filing date for purposes of any statutory or rule-based deadline.

(d) **Language Assistance Notices.** In an effort to provide language assistance to limited English proficient persons, the service of a summons shall include the Language Assistance Notices which informs the recipient of the right to a foreign language interpreter at no cost and contains instructions about how to obtain language assistance services. The most current versions of the Language Assistance Notices are located on the Judiciary's website at [www.courts.ri.gov](http://www.courts.ri.gov) under the heading of Public Resources, Forms, Family Court.

## II. DELINQUENCY AND WAYWARDNESS

**2. Petition.** — (a) **Submission.** Information that a child is delinquent or wayward shall be submitted to the court in the form of a petition by an “appropriate person” as defined in G.L. 1956 § 14-1-3(2).

(b) **Contents.** The petition shall be sworn to on the basis of knowledge or information and belief before a judicial officer or clerk of the court or before a notary public and shall set forth the following:

- (1) To the extent known the name, age, and residence of:
  - (a) The child;
  - (b) The child's parents;
  - (c) The child's other legal guardian, if there is one;
  - (d) The person having custody and control of the child; and
  - (e) The child's nearest known relative, if no parent or guardian can be found;
- (2) A plain statement of the facts by reason of which the child is allegedly delinquent or wayward, including reference to the statutory offense, if any, alleged to have been committed;

(3) If any of the facts required by subdivision (1) are not known by the petitioner, the petition shall so state; and

(4) The petition shall be entitled “In the matter of a child under eighteen (18) years of age.”

**3. Intake Procedure.** — Except in the case of an emergency detention, a petition shall upon submission to the court be referred to the Intake Department for preliminary investigation to determine whether the facts are legally sufficient to bring the child within the jurisdiction of the court and, if so, to determine whether the interests of the public or of the child require that further action be taken. The inquiry may include a preliminary investigation of the home and environmental situation of the child, the child's previous history, and the circumstances which were the subject of the petition. The report of any public agency, or of any private social agency licensed by the Department of Children, Youth, and Families, may be accepted by the court for the court's consideration.

**4. Informal Adjustment Procedure.** — (a) **Intake Department.** If the Intake Department decides to continue the intake process and to attempt informal adjustment, the Intake Department shall explain to the parties that the Intake Department intends to discuss plans for continuing contact with the child by the Intake Department or by any public or private agency without the formal filing of the petition, and that the Intake Department wants to question the parties in regard to the child's general behavior, the child's school and home environment, and other similar factors bearing upon the proposed informal adjustment. The parties shall be informed that the parties need not answer questions, that the parties have the right to be represented by an attorney, that information obtained from the parties by the Intake Department during the adjustment process will not be admissible in evidence at an adjudicatory hearing, that the parties may withdraw from the adjustment process at any time, and that the efforts at informal adjustment shall not preclude the formal filing of the same petition at a future date. The Intake Department shall further inform the parties that informal adjustment shall not constitute an adjudication and that if the parties deny the allegations no effort will be made to arrive at an informal adjustment.

(b) **Specialized Calendars.** If the Intake Department determines that the informal adjustment of the petition may be achieved by referral to a specialized calendar within the court, the petition shall be referred to that calendar for further proceedings.

(c) **Referral to the Chief Judge.** If the proposed informal adjustment is unacceptable to the petitioner, the Intake Department shall present the petition to the chief judge of the court or a designated judicial officer, together with the Intake

Department's recommendations, for determination by the chief judge or a designated judicial officer, as to whether the petition shall be formally filed.

**5. Filing of Petition: Amendment.**— (a) **Filing.** The filing of the petition constitutes assumption of jurisdiction over the child. Filing shall take place:

(1) Upon authorization by the Intake Department upon completion of the Intake Department's procedures pursuant to Rule 3;

(2) Upon authorization by a judicial officer of the court; or

(3) Forthwith upon appearance of the child before the court following emergency detention, unless the court otherwise orders.

(b) **Amendment.** A petition may be amended by order of the court at any time before an adjudication, provided that the court shall accord the party such additional time to prepare as may be required to ensure a full and fair hearing.

**6. Summons.** — (a) **Issuance; Form.** Upon the formal filing of a petition the court shall issue a summons which shall bear the signature of the clerk, be under the seal or watermark of the court (which shall be generated by CMS), and require the child and, if known to reside within the state, a parent, guardian, lawful custodian, or person with whom the child resides, to appear before the court at a time and place named therein for a hearing on the petition, the allegations of which shall be set forth in the summons. The summons shall inform the child and other persons to whom the summons is addressed of the right to an attorney and of the child's entitlement to the services of the public defender if financially unable to engage an attorney. The summons shall state that appearance may result in detention of the child.

(b) **Method of Service; By Whom Served.** The summons shall be served by delivering a copy to the person, or by leaving an attested copy thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion living therein. The summons may be served anywhere within the state by any person authorized by law to make such service.

(c) **Warrant for Arrest.** If a judicial officer of the court has reason to believe that a child may not appear upon summons, or if a child has been summoned and has failed to appear, the judicial officer may issue a warrant reciting the substance of the petition and requiring the officer to whom the warrant is directed to forthwith arrest the child and bring the child before the court.

(d) **Penalties Pursuant to G.L. 1956 § 14-1-19.** Any parent, guardian, lawful custodian, or other person having the care and control of a child who shall willfully refuse or neglect to appear in court in accordance with any summons served upon that person, may be fined not exceeding one hundred dollars (\$100) or be imprisoned not more than three (3) months.

**7. Release of Child Under Custody of the Court.** — In any case where the court has assumed jurisdiction over a child by the authorizing of the filing of a petition or otherwise, the court may, pending disposition of the case, release the child in custody of a parent, guardian, other custodian, the Director of the Department of Children, Youth, and Families, or other person appointed by the court.

**8. Detention Prior to Adjudication.** — (a) **Emergency Detention.** When an officer so authorized by law arrests a child believed to be delinquent or wayward and represents to the court that circumstances require immediate detention of the child for the child's own protection or that of the public, the court may, to the extent permitted by law, authorize such detention until the next court day when the child shall be presented to the court.

(b) **Hearing on Temporary Detention.** When a child is brought before the court before or after the filing of a petition on sworn representation of an appropriate person as to circumstances necessitating immediate detention for the protection of the child or of the public, the court shall provide for consultation between the child and the public defender or other available attorney. If an attorney is not available for such consultation, the court may order detention for one (1) court day in order that an attorney may be obtained. Following such consultation, the court may order detention of the child for a period not to exceed five (5) days in Providence/Bristol County and not to exceed seven (7) days in Kent, Newport, and Washington Counties. The order shall include a statement of the reasons for the temporary detention. If a petition has not been filed, the court shall waive the intake process and authorize the filing of a petition and service of the summons. The child and the child's parent, guardian, or other custodian shall be informed in writing of the right to choose an attorney and of the right of the child to the services of the public defender if financially unable to retain an attorney.

(c) **Probable Cause Hearing.** When the court has ordered the temporary detention of a child pursuant to subdivision (b) of this rule, unless waived on the record or in writing by the respondent, a hearing shall be held within five (5) days in Providence/Bristol County and within seven (7) days in Kent, Newport, and Washington Counties on written notice to the child and the child's parent, guardian, or other custodian to determine whether probable cause exists with respect to the allegations of delinquency or waywardness and as to the need for further detention for the protection of the child or the public. Such hearing may be combined with the commencement of the adjudicatory hearing.

(d) **Detention Order Pending Adjudication.** A detention order pending adjudication of the case shall set forth the facts and reasons for the detention. The detention shall not exceed thirty (30) days, except that for cause shown the detention

may be extended. The adjudicatory hearing shall be expedited in any case in which such detention has been ordered.

(e) **Detention for Violation of a Valid Court Order.** Prior to detaining a child at the Rhode Island Training School for a violation of a valid court order, the court shall conduct a hearing and determine that the child intentionally violated the order and that the violation involves the failure of the child to engage in services or activities intended to protect or promote the child's health or safety or the health or safety of any other person.

(f) **Hearing in Providence/Bristol County.** Any hearing required by this rule may be held in Providence/Bristol County where the unavailability of an attorney or the schedule of the court precludes hearing in the county in which the case is pending.

**9. Arraignment; Adjudicatory Hearing.** — (a) **Arraignment.** When a child appears before the court for arraignment in accordance with the summons, the court shall explain the right to an attorney and determine whether the parties are represented and shall appoint an attorney for the child where necessary. Upon request, or on the court's own motion, the court may appoint separate attorneys to represent the child, the child's parents, or any other party where it appears that the interests of the child and the child's parent or any other represented party may conflict. In the absence of a waiver, the court shall inform the child (or satisfy itself on the record that the child has been informed by an attorney) of:

- (1) The nature of the charges against the child;
- (2) The maximum sentence that could be imposed;
- (3) The benefit of the presumption of innocence;
- (4) The right to remain silent;
- (5) The right to confront and cross-examine the child's accusers and the witnesses against the child;
- (6) The right to testify and to call witnesses in the child's own defense;
- (7) The right to have the petitioner prove the child's guilt beyond a reasonable doubt; and,
- (8) The right to appeal any delinquency or waywardness finding to the Rhode Island Supreme Court.

Upon finding that the child understands these rights and consequences, the court may inquire of the child whether the child admits, denies, or with consent of the court admits sufficient facts to submit to the court's jurisdiction. Failure or refusal of the child to admit the allegations shall be deemed a denial of the allegations. If any or all of the allegations admitted by the child are sufficient for an adjudication of delinquency or waywardness, the court may take testimony to corroborate the admissions or may proceed directly to the adjudication.



(b) **Determination of Disputed Facts.** If any essential averment of the petition is in issue, the court shall determine the order and method of presentation of evidence. Any testimony admissible under the Rules of Evidence shall be admitted. Compulsory process shall issue on behalf of the child or any other party to compel testimony in the child's behalf. The court shall grant a continuance when necessary to ensure a fair presentation of the issues.

(c) **Findings, Quantum of Proof.** The court shall find the facts alleged in the petition to be established only by proof beyond a reasonable doubt or, in the case of a motion for violation of probation, by a fair preponderance of the evidence, and if the court so finds the court shall set forth the findings of fact upon which the court bases its determination in adjudicating the child to be delinquent or wayward. The court may dismiss or deny the petition when the court finds dismissal or denial is in the interest of justice and the welfare of the child.

(d) **Pre-adjudication.** Any test results, reports, and diagnostic evaluations shall be confidential documents. Such documents or any portion thereof shall not be disseminated without a finding by the court that such dissemination is in the child's best interest and is consistent with applicable federal or state laws and regulations.

**10. Discovery.** — (a) **Availability.** Every petition submitted by the petitioner shall have supporting documents attached. The reports or documents shall be available to the respondent or the respondent's attorney of record for inspection and copying.

(b) **Discovery by the Respondent.** Upon written request by a respondent, the attorney for the petitioner shall permit the respondent to inspect or listen to and copy or photograph any of the following items within the possession, custody, or control of the petitioner, the existence of which is known, or by the exercise of due diligence may become known to the attorney for the petitioner:

(1) All relevant written or recorded statements or confessions, signed or unsigned, or written summaries of oral statements or confessions made by the respondent, or copies thereof;

(2) All written or recorded statements or confessions which were by made by a co-respondent who is to be tried together with the moving respondent and which the petitioner intends to offer in evidence at the trial, and written summaries of oral statements or confessions of such a co-respondent in the event the petitioner intends at the trial to offer evidence of such oral statements or confessions;

(3) All books, papers, documents, photographs, audio recordings, images, and any other data or data compilations from which discoverable information can be perceived, or copies thereof, or tangible objects, buildings, or places which are intended for use by the petitioner as evidence at the trial or were obtained from or belong to the respondent;

(4) All results or reports in writing, or copies thereof, of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case and, subject to an appropriate protective order under subdivision (g), any tangible objects still in existence that were the subject of such tests or experiments;

(5) A written summary of testimony that the petitioner intends to use under Rules 702, 703, or 705 of the Rhode Island Rules of Evidence during the petitioner's case-in-chief at trial, which testimony describes the witness' opinions, the bases and reasons for those opinions, and the witnesses' qualifications;

(6) A written list of the names and addresses of all persons whom the petitioner expects to call as witnesses at the trial in support of the petitioner's direct case;

(7) As to those persons whom the petitioner expects to call as witnesses at the trial, all relevant recorded testimony before a grand jury of such persons and all written or recorded verbatim statements, signed or unsigned, of such persons and, if no such testimony or statement of a witness is in the possession of the petitioner, a summary of the testimony such person is expected to give at the trial;

(8) All reports or records of prior convictions of the respondent, or of persons whom the attorney for the petitioner expects to call as witnesses at the trial, and within fifteen (15) days after receipt from the respondent of a list produced pursuant to subdivision (b)(2) of persons whom the respondent expects to call as witnesses, all reports of records or prior convictions of such persons; and

(9) All warrants which have been executed in connection with the particular case and the papers accompanying them, including affidavits, transcripts of oral testimony, returns, and inventories.

(c) **Discovery by the Petitioner.** A respondent who seeks any discovery under subdivision (b) of this rule shall permit the petitioner, upon receipt of a written request, to inspect or listen to and copy or photograph any of the following items within the possession, custody, or control of the respondent or the respondent's attorney.

(1) All books, papers, documents, photographs, audio recordings, images, and any other data or data compilations from which discoverable information can be perceived, or copies thereof, or tangible objects, buildings, or places which are intended for use by the respondent as evidence at the trial;

(2) All results or reports in writing, or copies thereof, of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case and prepared by a person whom the respondent intends to call as a witness at the trial and, subject to an appropriate protective order under subdivision (g), any tangible objects still in existence that were the subject of such tests or experiments;

(3) A written summary of testimony that the respondent intends to use under Rules 702, 703, or 705 of the Rhode Island Rules of Evidence as evidence at trial, which summary describes the witness' opinions, the bases and reasons for those opinions, and the witness' qualifications;

(4) A written list of the names and addresses of all persons other than the respondent whom the respondent expects to call as witnesses at the trial in the event the petitioner presents a prima facie case; and

(5) As to those persons other than the respondent whom the respondent expects to call as witnesses at the trial, all written or recorded verbatim statements, signed or unsigned, of such persons and, if no such statement of a witness is in the possession of the respondent, a summary of the testimony such person is expected to give at the trial.

(d) **Notice of Alibi.** In the event a respondent seeks any discovery under subdivision (b) of this rule, then upon demand by the attorney for the petitioner and delivery by the attorney for the petitioner to the respondent of a written statement describing with specificity the date and time when and the place where the offense charged is alleged to have occurred, the respondent, within twenty-one (21) days after receipt of such demand and particulars, shall give written notification whether the respondent intends to rely in any way on the defense of alibi. If the respondent does so intend, the notice shall state with specificity the place at which the respondent claims to have been at the time of the alleged offense and the names and addresses of the witnesses the respondent intends to call at the trial to establish such alibi. Within twenty-one (21) days after receipt of written notification of intent to rely on the defense of alibi, together with particulars thereof, the attorney for the petitioner shall furnish to the respondent written notice of the names and addresses of the witnesses whom the petitioner intends to call at the trial to establish the respondent's presence at the place where and the time when the offense is alleged to have occurred.

(e) **Material Not Subject to Discovery.** Except as provided in subdivisions (b) and (c), this rule does not authorize discovery of internal reports, memoranda, or other documents made by a respondent, or the respondent's attorney or agent, or by the attorney for the petitioner, or by officers or agents of the petitioner, in connection with or in preparation for the prosecution or defense of the proceeding.

(f) **Failure to Call a Witness.** The fact that a person was designated by a party pursuant to subdivision (b)(6) or subdivision (c)(3) as an intended witness but was not called to testify shall not be commented upon at the trial by any party.

(g) **Protective Orders.**

(1) *Procedure.* Upon motion and a sufficient showing the court may at any time order that the discovery or inspection sought pursuant to this rule be denied,

restricted, or deferred, or make such other order as is appropriate. In determining the motion, the court may consider, among other things, the following:

(A) Protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals, and other intimidation;

(B) Maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity;

(C) Protection of confidential relationships and privileges recognized by law; and

(D) The need to safeguard from loss or to preserve the condition of tangible objects sought to be discovered under subsections (b)(4), (b)(5), (c)(1), and (c)(2).

The court may permit a party to make a showing of good cause, in whole or in part, in the form of a written statement to be inspected by the court alone. If the court thereafter enters a protective order, the entire text of the party's statement shall be sealed and preserved in the records of the court, to be made available only to an appellate court in the event of an appeal.

(2) *Deposition.* Upon application of a party who has, pursuant to subdivision (b)(6) or (c)(3), been requested to designate the names of persons who will be called as witnesses at the trial, the court may order that the testimony of one (1) or more persons so designated be perpetuated by oral deposition pursuant to the provisions in Rule 15 of the Rhode Island Family Court Rules of Criminal Procedure, at a time and place and before an officer ordered by the court. Examination and cross-examination shall proceed as permitted at the trial. A record of the testimony of such a witness shall be made and shall be admissible at the trial in accordance with the Rhode Island Rules of Evidence.

**(h) Procedure and Timing.**

(1) *Respondent's Request.* A request by a respondent for discovery and inspection shall be made within thirty (30) days after arraignment. The attorney for the petitioner shall respond in writing within thirty (30) days after service of the request stating with respect to each item or category either that discovery and inspection will be permitted or stating that the request will not or cannot be complied with and the reason why. The response shall also specify the place and time respondent may inspect the items being made available.

(2) *Petitioner's Request.* Together with the filing of the response to respondent's request for discovery and inspection pursuant to subdivision (b), the attorney for the petitioner may serve respondent with a request for discovery and inspection. The respondent shall respond within fifteen (15) days after service of the request stating with respect to each item or category either that discovery and inspection will be permitted or stating that the request will not or cannot be complied with and the reason why. The response shall also specify the place and time the attorney for the petitioner may inspect the items being made available.

(3) *Discovery or Inspection Withheld.* In the event a party refuses to comply with a request for discovery or inspection, the party who served the request may move for an order to compel compliance with his request.

(4) *Extensions of Time.* The court may on motion of a party and for good cause shown extend the time for serving requests or responses permitted or required under this rule.

(i) **Continuing Duty to Disclose.** If, subsequent to compliance with a request for discovery or with an order issued pursuant to this rule, and prior to or during trial, a party discovers additional material previously requested which is subject to discovery or inspection under this rule, the party shall promptly notify the other party of the existence thereof.

(j) **Failure to Comply.** If at any time during the course of the proceedings a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such a party to provide the discovery or inspection, grant a continuance, prohibit the party from introducing in evidence the material which or testimony of a witness whose identity or statement was not disclosed, or make such other order as the court deems appropriate. Upon finding a willful failure to comply, the court may prohibit the offending party from introducing in evidence the material or the testimony of a witness whose identity or statement was not disclosed.

**11. Disposition.** — (a) **Finding of Delinquency or Waywardness.** If the court finds that a child is delinquent or wayward, the court may order, upon any term the court determines, that:

(1) The child be placed on probation or under supervision in the child's own home or in the home of a relative or other suitable person;

(2) The child be placed in the custody of the Director of the Department of Children, Youth, and Families;

(3) The child be placed under the care, custody, and control of the Superintendent of the Rhode Island Training School;

(4) The child be placed in any other facility licensed or approved by another department of state government;

(5) The child, the child's parent, guardian, or other lawful custodian make appropriate and immediate monetary restitution to the owner of damaged property if the court finds that:

(i) A child is delinquent or wayward for any offense which has caused damage to the property of another; and

(ii) The child, the child's parent, parents, guardian, or other lawful custodian has the ability to pay restitution;

(6) The child engage in community restitution or service in addition to or in lieu of the restitution referred to in subsection (a)(5) of this rule, for a period of time to

be determined by the court and at a location to be determined or approved by the court; or

(7) The parent of the child is to undertake a program of counseling designed to attempt to remedy the conditions which led to the child coming before the court.

(b) **Finding of a Violation of Controlled Substances Act.** Without limiting the foregoing, if the court finds that a child is delinquent or wayward for any violation of the Rhode Island Controlled Substances Act, Chapter 28 of Title 21, the court may order the child, the child's parent, guardian, or other lawful custodian to participate in a program of counseling designed to attempt to remedy the conditions which led to the child coming before the court.

(c) **Adjudication of Truancy.** After an adjudication of truancy, the court may enter a valid court order requiring the child inter alia to attend school and cooperate, follow, and comply with all of the reasonable rules and regulations of the school and make any other order deemed appropriate by the court.

(d) **Filing of a Petition.** Prior to a finding that a child is delinquent or wayward, the court may place the petition on file for a period of one (1) year or less and may attach conditions to the petition. The conditions shall be a valid court order. If following the filing no action is taken on the petition, the petition shall be dismissed by the court.

(e) **Driving Privileges.** If a child is found delinquent or wayward after a hearing on the record, the court may deny, revoke, suspend, or reinstate a child's driving privileges including both the learning license and the driver's license. At the hearing, the court will consider any need of the child or the child's family for the child to have a driver's license, the relative benefits of the child retaining or losing driving privileges, and whether any circumstances in the school environment or educational services are adversely affecting the child's school attendance.

**12. Waiver or Certification — Juvenile Drug Offenders.** — A child age sixteen (16) years of age or older who has been found delinquent of having committed one (1) felony offense after the age of sixteen (16) involving the unlawful sale, distribution, manufacture, delivery, or possession with intent to manufacture, sell, distribute, or deliver any controlled substance listed in Schedule I or II of G.L. 1956 § 21-28-2.08, shall be either certified pursuant to G.L. 1956 § 14-1-7.2 or waived pursuant to G.L. 1956 § 14-1-7.1 for all subsequent felony offenses involving the unlawful sale, distribution, manufacture, delivery, or possession with intent to manufacture, sell, distribute, or deliver any controlled substance. Upon the filing of an appropriate motion, the court shall conduct a hearing in accordance with the applicable statute and Rules 13 and 14.

**13. Waiver Hearing. — (a) Initiation of Proceedings.**

(1) If any child is charged with an offense which would be punishable by life imprisonment if committed by an adult, that child, upon motion of the Attorney General, shall be brought before the court and the court shall conduct a waiver hearing pursuant to G.L. 1956 § 14-1-7.1.

(2) If any child sixteen (16) years of age or older is charged with an offense which would constitute a felony if committed by an adult, that child, upon motion of the Attorney General, shall be brought before the court and the court shall conduct a waiver hearing pursuant to G.L. 1956 § 14-1-7.1.

(3) A motion for waiver shall be filed with the court within thirty (30) days of arraignment.

(4) In any hearing on a motion for waiver, the court may consider whether the child may be alternatively certified pursuant to G.L. 1956 § 14-1-7.2 and Rule 14.

**(b) Proof.**

(1) At a waiver hearing, the Attorney General shall have the burden of producing evidence to enable the court to determine whether:

(A) Probable cause exists to believe that the offense charged has been committed and that the child charged has committed the offense, unless the proof has been elicited at a prior hearing on detention of the juvenile and the findings required by this rule have been made by the same judicial officer of the court who is conducting the waiver proceedings; and

(B) The child's history of offenses, history of treatment, or the heinous or premeditated nature of the offense is such that the interest of society or the protection of the public necessitates the waiver of jurisdiction over the child.

(2) If the court finds that subdivisions (b)(1)(A) and (b)(1)(B) of this rule have been proven by a preponderance of evidence, the court may waive jurisdiction over the child and refer the child to the appropriate court to be tried for the offense as an adult.

**(c) Standards for Determining Waiver of Jurisdiction.** In determining whether to waive jurisdiction, the court will be guided by the following standards, either one of which may serve as a sufficient basis for waiver:

(1) Treatability of the child, i.e. whether there are reasonable prospects for rehabilitating the child by the use of facilities currently available to the court in a private facility, a community facility, or a juvenile institution; or

(2) Protection of the public, i.e., whether there are reasonable prospects for adequately protecting the public by use of facilities currently available to the court.

**(d) Relevant Factors.** For purposes of applying the standards set forth in subdivision (c) of this rule, the following nonexclusive list of factors are relevant and may be considered by the court:

(1) The child's prior delinquent and wayward acts and the nature of the child's conduct therein;

(2) The nature of the child's alleged conduct in connection with the current charge, to the extent that:

(A) Such alleged conduct would form a pattern of anti-social conduct that seems beyond the rehabilitative reach of the facilities available to the court; or

(B) Such alleged conduct indicates that the child is dangerous to the public (dangerous to be measured in light of circumstances surrounding the alleged conduct, such as aggressiveness and the nature of the reasonably foreseeable consequences);

(3) The child's age, to the extent that a length of time beyond the limits of the court's jurisdiction is required for reasonable prospects of the child's rehabilitation;

(4) The child's attitude, to the extent that the child's attitude bears on the child's willingness to cooperate with the court's rehabilitative efforts;

(5) The child's family environment (including the degree of care, supervision, and support the family environment provides the child), to the extent that family support is essential to the court's rehabilitative program;

(6) The child's prior contact with rehabilitative facilities available to the court, in the community and in juvenile institutions, in terms of the extent and apparent rehabilitative impact of such contacts;

(7) The child's educational history;

(8) The child's medical health, mental health, and cognitive abilities as these factors may bear on the treatability of the child or the public safety;

(9) The child's age or mental maturity and the impact of the foregoing on the determination of the child's culpability for the offense; and

(10) Any other factors deemed relevant by the court to assist in assessing the best interest of the child and public safety concerns.

(e) **Decision; Findings; Order.** If, after the waiver hearing, the court orders the case to be transferred to the criminal jurisdiction of another court, the court:

(1) Shall make and enter specific findings supporting the court's decision and the reasons therefor;

(2) Shall enter an order transferring jurisdiction over such child to the appropriate court; and

(3) May order the child remanded to custody pending initiation of proceedings in an appropriate court.

(f) **Effect of Order Waiving Jurisdiction.** An order waiving jurisdiction over a child shall:

(1) Constitute a waiver of jurisdiction over that child for the offense upon which the motion is based as well as for all pending and subsequent offenses of whatever nature;

(2) Require referral of the child to the court which would have had jurisdiction if the offense had been committed by an adult; and



(3) Be vacated in the event that the child is acquitted of the offense for which the waiver had been sought.

**14. Certification Hearing. — (a) Initiation of Proceedings.**

(1) If any child is charged with an offense which would constitute a felony if committed by an adult, upon motion by the Attorney General, that child shall be brought before the court and the court shall conduct a certification hearing pursuant to G.L. 1956 § 14-1-7.2.

(2) A motion for certification shall be filed with the court within thirty (30) days of arraignment.

(b) **Proof.** At a certification hearing, the Attorney General shall have the burden of producing evidence to enable the court to determine whether:

(1) Probable cause exists to believe that the offense charged has been committed and that the child charged has committed the offense, unless the proof has been elicited at a prior hearing on detention of the child and the findings required by this rule have been made by the same judicial officer of the court who is conducting the certification proceeding;

(2) The child's past history of offenses, history of treatment, or the heinous or premeditated nature of the offense is such that the interest of society or the protection of the public necessitates the certification; and

(3) The jurisdiction of the court, but for the exercise of certification, is in all likelihood an insufficient period of time in which to accomplish a rehabilitation of the child.

(c) **Decision.**

(1) If the court finds that subdivision (b) has been proven by a preponderance of evidence, the court shall certify the child in accordance with to G.L. 1956 § 14-1-7.3.

(2) If the court finds that a child sixteen (16) years of age or older has been found delinquent for having committed two (2) offenses after the age of sixteen (16) which would render the child subject to an indictment if the child were an adult, the court shall certify the child in accordance with to G.L. 1956 § 14-1-7.3

(d) **Effect of Certification.** Upon a finding by the court that a child is subject to certification, the court shall afford the child a right to a jury trial unless the child in open court waives a jury trial in writing with the approval of the court.

(e) **Conduct of the Trial.** In the conduct of a trial under this rule, the procedure shall follow that set forth in the Family Court Rules of Criminal Procedure.

(f) **Sentencing.** Upon conviction for the offense charged, the court shall sentence the child in accordance with one of the following alternatives:

(1) Impose a sentence upon the child to the Rhode Island Training School until the time that the child attains the age of nineteen (19) years; or

(2) Impose a sentence upon the child for a period in excess of the child's nineteenth birthday to the Adult Correctional Institutions, with the period of the child's minority to be served at the Rhode Island Training School in a facility to be designated by the court. However, the sentence shall not exceed the maximum sentence provided for by statute for conviction of the offense.

(g) **Release.** Any child who is certified shall not be eligible for release from the Rhode Island Training School unless, after hearing, the certifying judicial officer, or in the absence of the certifying judicial officer, the chief judge or a designee, determines by clear and convincing evidence that the child will not pose a threat to the public during the term of the release.

(h) **Review of Sentence for a Period in Excess of Child's Nineteenth Birthday.** In any case where a child has been sentenced for a period in excess of the child's nineteenth birthday, the court shall schedule a review of the child's case thirty (30) days prior to the child's eighteenth birthday or thirty (30) days prior to the one-year anniversary of the imposition of the sentence, whichever is greater.

(1) The Attorney General shall notify the victim or victims of the crime for which the juvenile was certified and adjudicated of the pendency of the hearing.

(2) The court shall afford the victim or victims of the crime for which the juvenile was certified an opportunity to be heard.

(3) The court may suspend, but not vacate, the balance of the sentence upon proof by clear and convincing evidence that demonstrates that:

(A) The child has made sufficient efforts at rehabilitation; and

(B) The modification of the order of certification would not pose a threat to the safety of the public.

(4) In the event that the court, after a hearing, determines that the respondent has failed to demonstrate by clear and convincing evidence that the child has made sufficient efforts at rehabilitation and that modification of the order of certification would pose a threat to the safety of the public, the court shall order either that:

(A) The child be remanded to the Rhode Island Training School until further hearing to be held no later than one (1) year thereafter in accordance with subsection (g) of this rule; or

(B) The jurisdiction of the sentence be transferred to the Department of Corrections and that the balance of the sentence be served in facilities under the control of the department.

(i) **Modification Upon Motion.** Upon motion by the Attorney General or the Department of Children, Youth, and Families alleging that the child certified poses a serious threat to the safety of the public, other residents at the Rhode Island Training School, or the school's staff, the court shall conduct a hearing to consider modification of the order of certification. Upon a finding by clear and convincing evidence that the child poses such a threat then the court may order that the

jurisdiction of the sentence be transferred to the Department of Corrections and that the balance of the sentence be served in facilities under control of the department.

**(j) Effect of Further Charge after Certification and Adjudication.**

(1) After a hearing resulting in a finding that probable cause exists to believe that a child who was previously certified and adjudicated committed another offense which would be punishable as a felony if committed by an adult, the court may transfer jurisdiction over the adjudicated offense to the Department of Corrections to be served in facilities under the control of the department.

(2) A finding that a child who was previously certified and adjudicated committed another offense which subjects that child to certification, shall constitute presumptive evidence of the non-amenable of the child to further treatment in facilities available to the court:

(A) Unless the presumption is rebutted by clear and convincing evidence, the court shall transfer the jurisdiction over the child's existing sentence to the Department of Corrections to be served in facilities under the control of the department; and

(B) Unless the presumption is rebutted by clear and convincing evidence, the court shall waive jurisdiction over the offense charged and all subsequent offenses to the court which would have jurisdiction if the charged offense were committed by an adult.

(3) A waiver of jurisdiction over a child pursuant to the previous subsection shall constitute a waiver of jurisdiction over that child for that offense and for all subsequent offenses of whatever nature, and the child shall be referred to the court which would have had jurisdiction if the offense had been committed by an adult.

**(k) Public Information.** The name of any child certified and convicted shall be available to the public upon the child's nineteenth birthday or the child's transfer to the Adult Correctional Institutions, whichever occurs first.

### **III. DEPENDENCY, NEGLECT, ABUSE, TERMINATION OF PARENTAL RIGHTS**

**15. Dependency, Neglect, or Abuse. — (a) Petition.** Information that a child is dependent, neglected, and/or abused shall be submitted electronically to the court in the form of a petition by the Department of Children, Youth, and Families or by any person authorized by law.

**(b) Ex Parte Orders.** Whenever a petition seeking an ex parte order is presented, the petitioner shall disclose all available relevant information bearing upon the ex parte relief sought. The court shall take such action as it finds necessary for the protection of the child alleged to be dependent, neglected, and/or abused, including removal of the child from the custody of the parent or other person having custody

of the child. A signed physician's report that a child is neglected or abused shall be sufficient to support an ex parte order for removal. The parent, guardian, or other person having custody of the child shall appear before the court for a preliminary hearing on the petition within seven (7) days from the date of the filing.

(c) **Contents of Petition.** The petition shall be sworn to on the basis of knowledge or information and belief before a judicial officer or clerk of the court or before a notary public and set forth the following:

(1) To the extent known the name, age, and residence of:

(A) The child;

(B) The child's parents;

(C) The child's other legal guardian;

(D) The person having custody and control of the child; and

(E) The child's nearest known relative, if no parent or guardian can be found;

(2) A plain statement of the facts by which the child is allegedly dependent, neglected, and/or abused. Such facts may be set forth in an affidavit accompanying the petition; and

(3) The action requested of the court by the petitioner.

(d) **Filing.** The filing of the petition shall take place:

(1) Upon submission of a petition by the Department of Children, Youth, and Families for an ex parte order removing the child from the custody of the parents or other person alleged to have abused or neglected the child;

(2) Upon issuance of an ex parte order at the request of any other authorized person;

(3) Upon the submission of a petition by the Department of Children, Youth, and Families or another authorized person alleging dependency, neglect, and/or abuse; or

(4) Upon the order of a judicial officer of the court.

(e) **Amendment.** A petition may be amended upon motion or by order of the court at any time before an adjudication provided that the court shall allow the party such additional time to prepare as may be required to ensure a full and fair hearing.

**16. Summons Upon Petition.** — (a) **Summons: Form.** The summons shall bear the Signature of the clerk, be under the seal or watermark of the court (which shall be generated by the CMS), identify the court, and be directed to the parent or person acting as a parent. The summons shall also state the time, date, and location the respondent must appear and defend and shall notify the respondent that failure to do so may result in a fine or imprisonment. The court may allow a summons to be amended.

(b) **Summons: Issuance.** The summons, as provided in subdivision (a) of this rule, shall be issued in the following manner:

(1) For attorneys who are Registered Users, a summons shall be generated by the court and attached to the case following the acceptance of the petition and all other required documents by the court. Registered Users can retrieve the summons through the Public Portal; and

(2) For attorneys who are granted a waiver pursuant to Article X, Rule 3(c) of the Rhode Island Supreme Court Rules Governing Electronic Filing who do not elect to electronically file pursuant to Article X, Rule 3(b):

(A) A summons shall be generated electronically by the court and handed to the attorney at the time of filing the petition and all other required documents at the clerk's office;

(B) If the petition and all other required documents are mailed to the court, a summons shall be generated electronically by the court and mailed to the attorney if a self-addressed envelope is included; or

(C) If the petition and all other required documents are mailed to the court, a summons shall be generated electronically by the court and the attorney may obtain the summons at the clerk's office.

The petitioner's attorney shall deliver to the person who is to make service the original summons upon which to make return of service and a copy of the summons, petition, Language Assistance Notice, and all other required documents for service upon the respondent. Additional summonses may be issued against any respondent.

(c) **By Whom Served.** Service of all process shall be made by a duly authorized officer in accordance with Title 9, Chapter 5 (Writs, Summons, and Process) of the Rhode Island General Laws, by any other person authorized by law, or by some person designated by the court for that purpose. Designated appointments to serve process shall be made freely when substantial savings in travel fees will result.

(d) **Summons: Personal Service.** The summons, petition, Language Assistance Notice, and all other required documents shall be served together. The petitioner shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon a parent or person acting as a parent, other than an incompetent person by:

(i) Delivering a copy of the summons, petition, Language Assistance Notice, and all other required documents to the respondent personally;

(ii) Delivering a copy of the summons, petition, Language Assistance Notice, and all other required documents by leaving copies thereof at the respondent's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or

(iii) Any other method ordered by the court to give notice of the action to the respondent upon a showing that after diligent effort the process server was unable to serve the respondent personally.

(2) Upon a parent or person acting as a parent for whom a guardian or conservator has been appointed by serving copies of the summons, petition, Language Assistance Notice, and all other required documents upon such guardian or conservator and upon the incompetent person in the manner provided in paragraph (1) of this subdivision.

(3) Upon the state by delivering a copy of the summons, petition, Language Assistance Notice, and all other required documents to the Office of the Attorney General.

(e) **Service by Publication.** Whenever in an action described in subdivision (d) of this rule complete service cannot with due diligence be made by another prescribed method, the court shall order service by publication of a notice of the action in one (1) or more newspapers in such form and for such length of time as the court shall direct. If a statute expressly provides for service of process by publication, publication shall be in the form and manner provided by such statute.

(f) **Proof of Service.** The person serving the process shall make proof of service thereof on the original process or a paper attached thereto for that purpose, and shall forthwith return it to the petitioner's attorney. If service is made other than by a duly authorized officer in accordance with Title 9, Chapter 5 (Writs, Summons, and Process) of the Rhode Island General Laws, that person shall make affidavit thereof. A copy of any return receipt received in connection therewith shall be filed by the petitioner's attorney when returned. The petitioner's attorney shall, within the time during which the person served must respond to the process, file the proof of service with the court. Failure to make timely proof of service does not affect the validity of the service.

(g) **Amendment.** At any time in the court's discretion and upon such terms as the court deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

**17. Putative Father.** — (a) **Acknowledgement.** Whenever in a proceeding involving dependency, neglect, and/or abuse of a child or termination of parental rights, if the court becomes aware that a person not already a party is or may be the father of the child, such person shall be given notice of the proceeding and opportunity to participate upon acknowledgment of paternity and subsequent court order establishing paternity.

(b) **Denial.** In the event that a person named by the mother as a putative father appears and denies that he is the biological father of the child, the court shall direct that the putative father execute a written denial of paternity in a form to be approved by the court. Execution of such a document by the putative father shall constitute prima facie evidence of his denial of paternity. Upon execution of the denial of

paternity form, the court shall find that the Department of Children, Youth, and Families has no duty to make reasonable efforts to strengthen and encourage the relationship between the child and the putative father.

(c) **Determination of Paternity.** If an alleged putative father appears and neither admits nor denies paternity, the court may order the Department of Children, Youth, and Families to refer the putative father, within five (5) days, for a determination of paternity.

(d) **Deoxyribonucleic Acid (DNA) Testing.** If DNA testing is obtained, a copy of the report shall be filed with the court for a determination to be made regarding paternity. A written order of the court's findings shall be prepared by the Department of Children, Youth, and Families and provided to vital statistics if the birth certificate is to be amended.

**18. Preliminary Proceedings.** — (a) **Filing of a Dependent, Neglect, and/or Abuse Petition.** Upon the filing of a petition, the court shall forthwith issue a summons, in accordance with Rule 16, requiring the parent, guardian, or other person having custody of the child to appear before the court for a preliminary hearing on the petition on a date set forth by the court. The petitioner shall forthwith serve the parent, guardian, or other person having custody of the child the summons, petition, Language Assistance Notice, and all other required documents.

(b) **Preliminary Hearing.** At the preliminary hearing on the petition, the court shall:

(1) Advise the parent or other person having care of the child of the allegations contained in the petition;

(2) Arraign the respondent by entering either a denial or admission of the allegations contained in the petition;

(3) Assure that a guardian ad litem and/or a court-appointed special advocate has been appointed to represent the child;

(4) Appoint an attorney to represent a parent or any other person having custody of the child alleged to have been dependent, neglected, and/or abused when the parent or custodian is unable to afford such representation;

(5) Advise the parent or any other person having care of the child of the right to a probable cause hearing on an ex parte petition to be held as soon as practicable but no later than ten (10) days from the date of the request;

(6) Inquire as to the availability of a relative placement for the child;

(7) Inquire as to the applicability of and compliance with the mandates of the Indian Child Welfare Act, 25 U.S.C. § 1901, et seq.; and

(8) Make an interim order in the court's discretion with respect to custody, placement, visitation, residence for school purposes, and the rights of the child, including the child's right to a free and appropriate public education and the right to

be treated as an “Indian” child under the Indian Child Welfare Act in accordance with state and federal law.

(c) **Default.** If any parent, guardian, or other person having custody of a child shall, after due notice, fail to appear at the preliminary hearing, the court may enter a default and proceed then or at a subsequent date but no later than thirty (30) days after the default entered, unless extended by the court for good cause, to receive proof and enter judgment.

**19. Role of the Guardian Ad Litem of the Child.** — (a) **Access.** The guardian ad litem shall have access to the child including meeting with the child as deemed appropriate by the guardian ad litem or ordered by the court.

(b) **Pleadings.** The guardian ad litem shall be furnished with copies of all pleadings, documents, case plans, and reports by the party that served or submitted them.

(c) **Notice.** The guardian ad litem shall be notified of all court hearings and other proceedings concerning the case. Timely notice of all court hearings shall be provided to the guardian ad litem by the party requesting the proceedings.

(d) **Participation.** The guardian ad litem shall have the right to participate in all proceedings and may initiate and respond to motions.

(e) **Case Plans.** The guardian ad litem shall review all case plans and transition plans and monitor the progress towards the child's permanency goals.

(f) **Youths.** The guardian ad litem shall encourage any youth over the age of fourteen (14) to participate in the youth's own permanency and transition planning.

(g) **Settlement.** The guardian ad litem shall actively participate in settlement negotiations and, where appropriate, make specific recommendations to the court and/or parties that are designed to resolve disputes and bring closure to the issues for which the guardian ad litem has been appointed. No settlement proposal shall be presented to the court without the express knowledge of the guardian ad litem.

(h) **Additional Rights.** In addition to the rights set forth in this subdivision, the guardian ad litem shall have the right to:

- (1) Be present at all hearings;
- (2) Conduct discovery;
- (3) Bring motions before the court;
- (4) Subpoena witnesses;
- (5) Make recommendations to the court;
- (6) Present evidence;
- (7) Cross-examine witnesses;
- (8) Bring post-trial motions;
- (9) Appeal orders of the court;
- (10) Submit written reports to the court; and



(11) Investigate and ensure that the best interests of the child are served.

**20. Probable Cause Hearing.** — (a) **Evidence.** At a probable cause hearing requested pursuant to Rule 18(b)(5), credible hearsay evidence may be admitted in the discretion of the court. The petitioner may submit a signed physician's report, which while not conclusive, shall constitute prima facie evidence to support continued detention of a child pursuant to the ex parte order pending a trial on the underlying allegations of dependency, neglect, and/or abuse on the merits. The petitioner shall furnish the court with all available relevant evidence whether or not the evidence supports the petition.

(b) **Findings.** The court shall make findings as to whether there is probable cause to remove the child from the parent's care, whether the Department of Children, Youth, and Families has made reasonable efforts to prevent removal of the child from the home, and whether continued detention in the custody of the Department of Children, Youth, and Families is in the best interests of the child. If the court orders continued detention of the child, the court shall state the reasons underlying each of the courts findings.

**21. Discovery.** — (a) **Availability.** Upon the petitioner filing with the court a petition alleging dependency, neglect, and/or abuse of a child or for termination of parental rights, the petitioner shall promptly provide to the Office of the Public Defender, Rhode Island Legal Services, Court Appointed Special Advocate, and any attorney or guardian ad litem representing either the respondent or the child, a copy of the petition and any accompanying summary of facts and physician's report of examination. Upon written request or order of the court, the petitioner shall within twenty (20) days, or otherwise as ordered by the court, provide to all interested parties the following:

(1) The names and addresses of all witnesses, including expert witnesses, if known, and a copy of any written statements and reports made, or if such statements have not been reduced to writing, a summary of the testimony each witness is expected to give;

(2) Copies of all photographs, hospital, medical, psychiatric, scientific or psychological reports the petitioner intends to introduce in support of the pending petition;

(3) Copies of all child protective investigations and findings, case plans and the case activity notes of all social workers and other employees of the Department of Children, Youth, and Families assigned to the case; and

(4) An opportunity to inspect any physical evidence.

Upon compliance with a request for discovery, the petitioner may similarly request reciprocal discovery to include a list of witnesses intended to be called on

behalf of each party and a summary of the testimony expected of each witness to be produced at least ten (10) days prior to trial or hearing.

(b) **Continuing Duty to Disclose.** If, subsequent to compliance with a request for discovery or with an order issued pursuant to this rule and prior to or during trial, a party discovers additional material or information which is subject to discovery or inspection, the party shall promptly notify the other party of the existence thereof and provide copies of the additional material and disclose the additional information.

(c) **Additional Discovery.** The discovery provided for in this rule is not intended to limit the amount or nature of disclosure in these cases. The rule merely establishes the minimum amount of disclosure required. The court may order additional discovery and establish time limits for the responses to discovery.

(d) **Failure to Comply.** If at any time during the course of the proceedings a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to provide the discovery or inspection, grant a continuance, impose sanctions, or make such other order as the court deems appropriate. Upon finding a willful failure to comply, the court may prohibit the offending party from introducing in evidence the material or the testimony of a witness whose identity or statement was not disclosed.

**22. Trial on the Merits; Disposition.** — (a) **Disposition at Preliminary Hearing or Probable Cause Hearing.** Whenever at a preliminary hearing or probable cause hearing the parent, guardian, or other person having custody of the child admits the allegations of the petition, the court may accept a plea from a parent, guardian, or other person and enter a disposition.

(b) **Decision, Findings, Quantum of Proof.** At the conclusion of all evidence at a trial upon the merits, the court shall, as soon as practicable, render a decision. A determination that a child is dependent, neglected, or abused shall be made based on findings of fact and upon clear and convincing evidence, unless a higher standard is required by law. The court shall clearly state the facts upon which the court bases such determination and the court's reasons therefor. The attorney for the petitioner shall prepare a judgment that recites the findings of fact and orders made by the court.

(c) **Plan.** When the court finds a child dependent, neglected, and/or abused, and in continuing need for care inconsistent with a return of custody to the parent, guardian, or other person previously having custody, the court shall direct the Department of Children, Youth, and Families to submit within thirty (30) days a written plan for care and treatment of the child. The court shall thereafter approve or modify such plan, or shall remand the plan to the Department of Children, Youth, and Families for further development and resubmission. The time for initial submission may be extended for good cause.

(d) **Review of Plan.** Upon approval of a plan submitted pursuant to subsection (c), for the care and treatment of a child, the court shall direct the Department of Children, Youth, and Families to review such plan and report thereon to the court not later than six (6) months thereafter. At reviews or permanency hearings, the court shall review any oral or written reports offered by the child's foster parents.

**23. Permanency Hearings.** — (a) **Scheduling a Permanency Planning Hearing.** At the preliminary hearing, the court shall schedule a permanency planning hearing for children in state care, to occur within twelve (12) months of a child's entry into care.

(b) **Responsibilities of the Department of Children, Youth, and Families.** At every regularly scheduled permanency hearing of any child in the care or custody of the Department of Children, Youth, and Families pursuant to a dependency, neglect, abuse, and/or termination of parental rights petition, the Department of Children, Youth, and Families shall present a letter detailing the progress towards permanency and a written reunification and/or permanency plan to the court for approval. All parties, including self-represented litigants, shall be allowed to review the permanency hearing court letter prior to the hearing.

(1) *Permanency Plan.* The plan shall include whether, and if applicable when, the child will be returned to the parent, placed for adoption, referred for legal guardianship, placed with a fit and willing relative or kinship, or placed in another planned permanent living arrangement. The plan shall clearly set forth the services to be provided to the parents and the goals and obligations of the Department of Children, Youth, and Families, parent, child, and all other parties. The plan may be approved, rejected, or modified by the court.

(2) *Court Letter.* The Department of Children, Youth, and Families shall electronically file, at least forty-eight (48) hours prior to the permanency hearing, a letter that addresses the appropriateness of the plan of the Department of Children, Youth, and Families for services, whether the plan is for the child to be returned home to either parent or both, to remain in the care of the Department of Children, Youth, and Families, to be placed for adoption following a termination of parental rights, to be referred for legal guardianship, or to be placed in another planned permanent living arrangement. The permanency court letter shall address the child's legal and educational status, the safety of the current placement, and the plan's success in meeting the child's social, emotional, and physical needs. The permanency court letter shall also contain a report on the child's visitation with parents and siblings, the progress towards reunification or adoption, depending on the case plan goal, and any future evaluations and services recommended to accomplish the child's permanency goal. Any relevant reports from agencies or professionals providing

direct services to the child or the family shall be attached to the permanency court letter.

(3) *Youths*. For each youth age fourteen (14) and over, the court shall inquire regarding the youth's input into the permanency plan. For youths age sixteen (16) and older whose permanency goal is Another Planned Permanency Living Arrangement, the court shall require that the youth be present at the permanency hearing, if possible, and the court shall inquire as to the youth's input into the plan, whether the youth is getting reasonable and prudent parenting in foster placement, and whether the youth still desires Another Planned Permanency Living Arrangement rather than reunification.

(c) **Findings by the Court.** At the conclusion of the hearing and after all parties have had an opportunity to be heard, the court shall make findings regarding the safety and the best interests of the child, the appropriateness of the proposed case plan, any progress towards the plan's goals, the length of time the child has been placed out of the home, and the reasonableness of the efforts of the Department of Children, Youth, and Families toward either reunification or toward effectuating permanency. The court shall then enter an order of permanency and direct:

(1) That the child remain at home or be returned to and safely be maintained in the home of the parent, guardian, or relative;

(2) That the child's placement in foster care shall continue or that the child shall be placed in a residential facility;

(3) That reunification efforts shall be continued or shall not be required; or

(4) That a termination of parental rights petition shall be filed within such time as the court shall order or shall not be filed.

**24. Involuntary Termination of Parental Rights.** — (a) **Petition.** The Department of Children, Youth, and Families or any other agency authorized by law may petition the court for termination of legal rights of the parent or parents to a child. The petition shall be sworn to by an authorized agent of the petitioner on the basis of knowledge or information and belief before a judicial officer or clerk of the court or before a notary public. The petition shall include the following:

(1) To the extent known the name, age, and residence of:

(A) The child;

(B) The child's parents;

(C) The child's other legal guardian;

(D) The person having custody and control of the child; and

(E) The child's nearest known relative if no parent or guardian can be found.

(2) The action requested of the court by the petitioner;

(3) A statement of facts, in addition to the petition, on which the petition is based, including reference to the specific statutory grounds on which termination of parental rights is sought; and

(4) An affidavit swearing to the statement of facts in addition to the petition.

(b) **Notice.**

(1) Upon the filing of a petition the court shall forthwith issue a summons requiring the parent, guardian, or other person having custody of the child to appear before the court for a preliminary hearing on said petition within twenty (20) days from the date of the filing thereof. The summons shall be issued and served in accordance with Rule 16.

(2) When a respondent, after service in accordance with this rule, is unable to appear in court due to hospitalization, institutionalization, imprisonment, or other circumstances that the court determines would make the respondent's appearance impractical or inexpedient, the court shall ensure that the respondent receives notice and an opportunity to be heard in the proceedings.

(3) When a parent's whereabouts are unknown at the time the petition is filed, the Department of Children, Youth, and Families shall immediately commence a diligent search to locate the parent.

(c) **Preliminary Hearing.** A preliminary hearing shall be held on the petition for the court to:

(1) Advise the parent or other person having care of such child of the allegations contained in the petition;

(2) Assure that all parents have been identified and located, and if there is an unnamed or absent parent, inquire as to efforts made to locate that person;

(3) Arraign the respondent by entering either a denial or admission of the allegations contained in the petition;

(4) Assure that a guardian ad litem and/or a court appointed special advocate has been appointed to represent the child;

(5) Appoint an attorney to represent the parent and any person having such care or custody of such child when the parent or custodian is unable to afford such representation;

(6) Appoint an attorney and a guardian ad litem, if necessary, where the court determines that a respondent is a minor or is unable to appear in court due to hospitalization, institutionalization, imprisonment, or other circumstances that would make the respondent's appearance impractical or inexpedient and where the respondent made known the respondent's desire to be represented in the petition;

(7) Advise the parent and any other person named on the petition of the right to participate fully in a hearing on the allegations of the petition;

(8) Make any interim order in the court's discretion respecting the custody, visitation, and rights of the child; and

(9) Inquire as to the applicability of and compliance with the mandates of the Indian Child Welfare Act, 25 U.S.C. § 1901, et seq.

(d) **Default.** If any parent, guardian, or other person having custody of a child shall, after due notice, fails to appear at the preliminary hearing, the court may enter a default and proceed to receive proof and enter judgment then or at a subsequent date no later than thirty (30) days after the default entered unless the time for receiving proof is extended by the court for good cause.

(e) **Discovery.** Discovery shall be conducted in accordance with Rule 21. Once discovery is complete, the court shall set a date for a case management conference.

(f) **Hearings on the Merits.** A trial shall be commenced within ninety (90) days of the case management conference, unless good cause is shown. Trial dates should be scheduled for consecutive days, whenever possible. Where the court determines that a respondent is unable to appear in court due to hospitalization, institutionalization, imprisonment, or other circumstances that would make the respondent's appearance impractical or inexpedient, the court shall permit video communication when available and telephonic communication if video is not available. The court shall provide reasonable means for the respondent and an attorney to communicate confidentially. The court shall draw no inference as to the fitness of the parent based on the need for video, telephonic, or other electronic assistance.

(g) **Disposition.**

(1) Pursuant to G.L. 1956 § 15-7-7, if the court finds by clear and convincing evidence that one (1) or more of the grounds authorizing termination of parental rights exists and that the best interests of the child require the termination of such rights, the court shall terminate the parental rights and set forth in the judgment of termination the facts and conclusions of law upon which the termination is based.

(2) If the court finds that there are no grounds to terminate parental rights or that the best interests of the child require that such rights should not be terminated, the court shall dismiss the petition and set forth in the order the facts and conclusions of law upon which the dismissal is based.

(h) **Judgment.**

(1) If a court finds that the parental rights of the parent should be terminated, the court shall by judgment duly entered appoint some suitable person to give or withhold consent in any subsequent adoption proceedings. In petitions filed by licensed or governmental child placement agencies, the court shall further vest the agency with all rights of guardianship over the child.

(2) The attorney for the petitioner shall prepare a separate judgment for each child whose parent's rights have been terminated and shall serve a copy of the termination of parental rights judgment upon the parent's attorney or self-represented parent and upon the guardian ad litem within fourteen (14) days of the court's decision.

(A) The judgment shall recite the name of the parent whose rights have been terminated;

(B) The judgment shall recite the specific findings of fact made by the court; and

(C) Where there is no objection, the termination of parental rights judgment shall be filed by the attorney who prepared the judgment.

(i) **Review.** In the event that any child whose parent's rights have been finally terminated and the child has not been placed by the agency in the home of a person with the intention of adopting the child within thirty (30) days from the date of entry of the judgment of termination of parental rights, the court shall review the status of the child and the agency shall file a report that documents the steps the agency has taken to find an adoptive family or other permanent living arrangement for the child, including child specific recruitment efforts.

(j) **Conclusion of Proceedings.** The court shall make findings of fact and conclude all hearings on petitions for termination of parental rights within one hundred eighty (180) days after notice to the parents has been effectuated. If the court is unable to conclude a hearing within one hundred eighty (180) days, the court shall enter an order setting forth the facts which necessitate an extension of the time period.

(k) **Challenge to Termination of Right to Give or Withhold Consent for Adoption.** Any challenge or petition to reverse a termination of a parent's right to give or withhold consent for adoption shall be filed no later than one hundred eighty (180) days after a judgment, decree, or an order is entered.

**25. Voluntary Termination of Parental Rights.** — (a) **Filing of Petition.** A voluntary termination of parental rights petition may be filed by any licensed or governmental child placement agency at the request of the parent or parents of a child under eighteen (18) years of age.

(b) **Hearing.** After any notice to the parent or parents that the court deems proper, the court shall hold a hearing on the merits of the petition. If the court finds after examination of the parent or parents that the parent or parents freely, knowingly, and voluntarily wish to terminate parental rights and that the granting of the petition is in the best interests of the child, the court may grant the petition and order that the consent of the parent or parents to a subsequent adoption petition shall no longer be necessary and that the agency shall be the guardian of the child for all purposes and the sole party to give or withhold consent to adoption.

(c) **Consent of Minor Parent.** The court shall require the written consent of one (1) of the parents, guardians, or guardian ad litem of any minor parent who wishes to consent to any termination of rights pursuant to G.L. 1956 § 15-7-6. If the whereabouts of both parents of the minor parent are unknown, that fact shall be sworn to by the petitioner or an authorized officer or official of the licensed or

governmental child placement agency after notice in accordance with Rule 32. The court may grant the petition upon a finding that the granting of the petition for adoption or the termination of rights is in the best interest of the child.

(d) **Challenge to Termination of Right to Give or Withhold Consent for Adoption.** Any challenge or petition to reverse a termination of a parent's right to give or withhold consent for adoption shall be filed no later than one hundred eighty (180) days after a judgment, decree, or an order is entered.

**26. Mediation of Parental Rights.** — (a) **Referral.** Parental rights mediation to consider legal guardianship or open adoption of a child shall be available upon referral by a judicial officer.

(b) **Notice.** The court shall set the date for an initial mediation and give notice to the parties. The Department of Children, Youth, and Families shall give notice to the foster parent.

(c) **Appearance.** Unless otherwise excused, the parties, including the foster parent, must appear at the scheduled mediation.

(d) **Role of the Mediator.** The mediator shall assist the parties, in a cooperative setting, to reach a fully informed and mutually acceptable resolution to the matter referred. The mediator shall help the parties evaluate whether a proposed agreement is workable, including any provision that depends on the action or behavior of a person who is not a party to the case. The mediator may review and consider any information relevant to the case as presented by the parties. The mediator shall report to the court whether or not the mediation results in a resolution.

**27. Legal Guardianship.** — (a) **Petition.** The Department of Children, Youth, and Families or the parent previously having custody of a minor child in the care of the Department of Children, Youth, and Families may petition the court to appoint another as Legal Guardian for the child.

(b) **Contents of Petition.** The petition shall set forth:

(1) The name, address, and birthdate of the petitioner and the petitioner's relationship to the child, if any;

(2) The name, age, and address of the child if different from the petitioner's; and

(3) The names, addresses, and birthdates of the parents.

(c) **Consent.**

(1) The petition must be consented to by the Department of Children, Youth, and Families and the parents previously having custody of the minor child now in the care of the Department of Children, Youth, and Families.

(2) A child who is age fourteen (14) or older must consent to the petition.



(d) **Judgment.** Upon entry of a judgment granting the petition for legal guardianship, the court shall terminate the award of custody and involvement of the Department of Children, Youth, and Families.

(e) **Revocation or Modification of Guardianship.** A legal guardianship may be revoked or modified upon motion with notice to the guardian, the Department of Children, Youth, and Families, the Court Appointed Special Advocate, the parent, and any and all interested parties. After hearing, the court may revoke or modify the guardianship if the court determines that the guardianship is no longer in the best interest of the child.

**28. Petition for Voluntary Placement. — (a) Submission and Scheduling.**

(1) A petition for voluntary placement shall be filed within one hundred twenty (120) days of admitting a child into state care on a voluntary basis except in cases where a dependency, neglect, and/or abuse petition is filed as an alternative within the same time frame. The petition may be filed by the Department of Children, Youth, and Families or by any person authorized by law to do so.

(2) The court shall schedule a hearing within sixty (60) days of the filing of the petition or on or before the child's 180th day in placement, whichever comes first. The Department of Children, Youth, and Families shall notify the child's parent or other guardian and the Office of the Child Advocate of any petition for voluntary placement filed and the date of the scheduled hearing.

(b) **Contents of the Petition.** The petition shall set forth the following:

(1) The name, age, and residence of:

(i) The child;

(ii) The child's parents;

(iii) The child's legal guardian if different than the parents;

(iv) The person having custody and control of the child if no parent or guardian can be found; and

(v) The nearest known relative, if no parent or guardian can be found.

(2) A statement indicating which, if any, of the facts required by subsection (b)(1) are not known;

(3) A statement of the facts describing the circumstances of a child in voluntary placement which may be set forth in an affidavit accompanying the petition;

(4) The date the voluntary placement agreement was executed; and

(5) The action requested by the petitioner.

(c) **Summons.** Upon the filing of a petition for voluntary placement, the court shall issue a summons requiring the parent, guardian, or other person having custody of the child to appear before the court. The summons shall be in the form and served forthwith in accordance with Rule 16.

(d) **Preliminary Hearing.**

(1) The court shall:

(A) Advise the parent or other person having care of such child of the statements contained in the petition;

(B) Appoint the Office of the Child Advocate as guardian ad litem to represent the child;

(C) Make a determination as to whether continuation in care is in the child's best interest and, if so, whether the case plan is appropriate to meet the child's needs;

(D) Grant the petition upon a determination that the parent or other person having care of such child understands the statements made in the petition;

(E) Grant approval for the placement that the child is in, including an out of state placement, if the placement is found to be in the best interest of the child;

(F) Make a determination as to the residence of the child for school purposes; and

(G) Inquire as to the applicability of and compliance with the mandates of the Indian Child Welfare Act, 25 U.S.C. § 1901, et seq.

(2) The court may make any interim order, in the court's discretion, respecting the rights and needs of the child.

**(e) Permanency Hearing.**

(1) The court shall schedule and conduct a permanency hearing for each child in voluntary placement within twelve (12) months from the date the child was voluntarily placed in the care of the Department of Children, Youth, and Families.

(2) If a child continues to need placement after twelve (12) months in state care, the Department of Children, Youth, and Families shall file a written statement outlining the compelling reasons for continued placement and a case plan at the permanency hearing.

**(f) Children with Severe Emotional or Developmental Disabilities.**

For any child with severe emotional or functional developmental disabilities who will continue to require the services of the Department of Children, Youth, and Families beyond the child's eighteenth (18th) birthday, a petition seeking custody shall be filed with the court prior to the child's eighteenth (18th) birthday.

**29. Election to Remain in Placement as a Young Adult.** — (a) **Eligibility.** Any child who is in foster care on the child's eighteenth (18th) birthday and who meets the requirements of G.L. 1956 § 14-1-6(c) or (d), may voluntarily elect to extend care and placement by the Department of Children, Youth, and Families and to remain under the legal supervision of the court as a young adult until age twenty-one (21).

(b) **Petition.** If an eligible child elects to extend placement until the age of twenty-one (21), a representative of the Department of Children, Youth, and Families shall file a petition for legal supervision of a young adult in accordance with the procedure and requirements set forth in G.L. 1956 § 14-1-11.1.

(c) **Hearings and Reviews.** The court shall conduct a review of the progress of and the case plan for the young adult within one hundred eighty (180) days from the date the voluntary placement agreement was signed; and, the court shall hold a permanency hearing within one (1) year from the date the voluntary placement agreement was signed and annually thereafter, until the age of twenty-one (21).

#### **IV. ADOPTION**

**30. Petition.** — A petition for adoption of a child under eighteen (18) years of age shall be signed by the petitioner and shall contain the following:

(1) The name, age, citizenship, race, marital status, and residence of the petitioner and relationship, if any, to the child;

(2) If the petitioner is married and the petitioner's spouse is not also a petitioner, the name, age, and citizenship of the spouse and the spouse's relationship, if any, to the child;

(3) The name, date of birth, sex, and residence of the child;

(4) The date on which the child began residing with the petitioner;

(5) The name, date of birth, and residence of each parent and guardian. If unknown to the petitioner, the petition shall contain a statement setting forth the extent of the petitioner's inquiry and knowledge concerning those facts and the circumstances under which the petitioner received the child. If the child was received from a licensed adoption agency or the Department of Children, Youth, and Families such statement may be omitted;

(6) The name by which the child shall be known;

(7) A statement that establishes the grounds for adoption to include that the petitioner desires to establish a parental relationship with the child and is able to support the child and that the child's adoption by the petitioner is in the best interests of the child;

(8) The name of any person or authorized agent whose consent to the adoption is required and that person's notarized signature consenting to the adoption; and

(9) The name of any person whose consent to the adoption is required but who has not consented and a statement of the circumstances which excuse the lack of consent, including all court orders and findings.

**31. Supporting Documentation.** — (a) **At the Time of Filing.** The petitioner shall file the petition for adoption with the following documents:

(1) A certified copy of the child's original birth certificate;

(2) A certified translation of any non-English language birth certificate;

(3) A motion to waive the requirement that a spouse join in the petition for good cause shown, if the petitioner is married and the petitioner's spouse is not also a petitioner; and

(4) A motion to waive a Home Study, if applicable.

(b) **Prior to the Hearing.** The following supporting documentation shall be filed with the court no later than one (1) week prior to the date scheduled for hearing the adoption petition, unless excused by the court:

(1) A copy of the petitioner's marriage certificate, if applicable;

(2) A certified copy of any final judgments of divorce or death certificate, if applicable;

(3) A copy of each petitioner's driver's license, passport, or state issued identification card;

(4) A certified copy of the termination decree if entered in a state other than Rhode Island, if applicable;

(5) Proof of notice to or consent of the parents, if the parents' rights have not been terminated and a certified translation of any non-English language document required by this subsection; and

(6) A Home Study on adoptive home, unless waived.

(c) **At the Hearing.** A completed Report of Adoption on forms promulgated by the Rhode Island Department of Health shall be submitted by the petitioner at the hearing.

**32. Service on Parents.** — (a) **Service.** In any petition for adoption that is not consented to in writing by both parents, the petitioner must file proof of service of the petition, summons, and all other required documents on the non-consenting parent pursuant to Rule 16.

(b) **Service by Publication.**

(1) Whenever an adoption petition cannot be served with the exercise of due diligence in accordance with subsection (a) of this rule because the identity of a parent is unknown or the parent's address is unknown, the petitioner shall file an affidavit describing the parent's last known address and the efforts made to identify and/or locate the unknown parent and a motion for advertisement. Upon review of the affidavit, and after inquiry made of any available parent, the court may make a determination that service cannot be effectuated, and may order service by publication of the action in any newspaper of general circulation in the locality of the parent's last known address, in such form and for such length of time as the court shall direct.

(2) Where both parents are deceased, the court shall order publication of notice of the adoption petition.

(c) **Service on Institutionalized or Incompetent Parents.** Upon a determination that a parent is institutionalized or incompetent or otherwise incapacitated, the court shall appoint a guardian ad litem to accept service on behalf of the parent if good cause is shown.

(d) **Service on Incarcerated Parents.** In any petition for adoption that is not consented to in writing by both parents, the petitioner must file proof of service to the non-consenting incarcerated parent by personal service of the petition and a summons pursuant to Rule 16. Provided however, for those parents incarcerated out of state, the petitioner must provide proof of service sufficient to satisfy the court that the parent has personally received the petition and a summons.

(e) **Service on Sperm or Ovum Donors.** Service is not required if the genetic material of a sperm or ovum donor is donated to a licensed assisted reproduction facility and the donor, the donee, and the adoptive parent are undisclosed and unidentified to each other.

(f) **Service pursuant to the Indian Child Welfare Act.** Where the court knows or has reason to know that the child is an Indian child, service must comply with the mandates of the Indian Child Welfare Act, 25 U.S.C. § 1901, et seq.

**33. Claim of Right.** — If the parent or a person representing to be the parent claims rights to the child, the court shall proceed to determine the parent's rights and may order paternity testing if warranted.

**34. Failure to Appear.** — If a parent fails to appear after being duly served or if appearing fails to claim any rights to the child, the court may enter an order terminating the parent's rights with reference to the child.

**35. Consent to Adoption.** — (a) **Time of Consent.** The adoption petition may be consented to in writing by a parent no sooner than fifteen (15) days after the child has been born. If neither parent is living, the guardian of the child, or if there is no guardian, the next of kin, may give consent. If the parents' rights have been terminated or there is no next of kin, the court may appoint a suitable person or agency to act as legal guardian of the child and to give or withhold the consent.

(b) **Requirements of Consent.**

(1) The consent of the parent or legal guardian shall be on the petition, given under oath, and signed by the parent or legal guardian before a witness whose signature shall also be on the petition.

(2) The court must determine, after hearing, that the parents have consented freely, knowingly, and voluntarily and that the adoption is in the best interest of the child.

(c) **Consent of Minor Parent.** The court shall require the written consent of one of the parents, guardian, or guardian ad litem of any minor parent who wishes to consent to any adoption petition. If the whereabouts of both parents of the minor parent are unknown, that fact shall be sworn to by the petitioner or an authorized officer or official of a the licensed or governmental child placement agency after notice in accordance with Rule 32. The court may grant the petition upon a finding that the granting of the petition for adoption is in the best interest of the child.

(d) **Consent of Sperm or Ovum Donor.** The consent of a sperm or ovum donor is not required if the genetic material of the sperm or ovum donor is donated to a licensed assisted reproduction facility and the donor, the donee, and the adoptive parent are undisclosed and unidentified to each other, proof of which may be made by a sworn affidavit of the donor, the donee, the adoptive parent, and the authorized representative of the licensed assisted reproduction facility.

(e) **Consent of Youth Adoptee.** If the child to be adopted is fourteen (14) years of age or over, the adoption petition must be consented to in writing by the child, and the child should be present at the adoption hearing unless excused by the judicial officer for good cause.

(f) **Consent of Out-of-State or Incarcerated Parent.** If a parent or legal guardian lives out of state or is incarcerated and wishes to consent to the adoption petition, the signature of the parent or legal guardian on the adoption petition shall be notarized. The parent or legal guardian shall attach a sworn affidavit with the name, address, and telephone number of and a statement by the parent or legal guardian acknowledging parentage of the child and attesting that consent is given knowingly, freely, and voluntarily with full understanding of the consequences of the consent.

**36. Adoption by Step Parent; Grandparent.** — (a) **Consent of Step Parent; Grandparent.** An adoption petition may be filed when the petitioners are the parent of the child and the parent's spouse or one of the grandparents of the child and the child is residing, at the time the petition is filed, with the petitioners. If the noncustodial parent has not consented to the adoption in writing, the noncustodial parent shall be served in accordance with Rule 32.

(b) **Failure of Non-custodial Parent to Appear.** If the non-custodial parent fails to appear after proper service, the court may enter a default and terminate that noncustodial parent's rights involuntarily. In making the determination, the court shall apply the grounds for termination of parental rights as set forth in G.L. 1956 § 15-7-7. The petitioner need not demonstrate, and the court shall not require, efforts to encourage and strengthen the child's relationship with the noncustodial parent prior to terminating the noncustodial parent's parental rights. Within fourteen (14)

days, the petitioner shall prepare and file an appropriate decree, reciting the findings of fact.

(c) **Refusal of Non-custodial Parent to Consent.** If the noncustodial parent appears and refuses to consent to the adoption, then the court shall hold a hearing and may grant the petition without a noncustodial parent's consent if the petitioners prove by clear and convincing evidence any of the grounds set forth in G.L. 1956 § 15-7-7(a)(1), (2), or (4) and that the adoption is in the best interests of the child. The petitioners need not demonstrate, and the court shall not require, efforts to encourage and strengthen the child's relationship with the noncustodial parent prior to terminating the noncustodial parent's parental rights. Within fourteen (14) days, the petitioners shall prepare and file an appropriate decree, reciting the findings of fact. The decree shall contain a certification stating that the decree has been sent to the noncustodial parent at the noncustodial parent's last known address.

(d) **Consent of Non-custodial Out-of-state or Incarcerated Parent.** If the non-custodial parent lives out of state or is incarcerated and wishes to consent to the adoption petition, the noncustodial parent's signature on the adoption petition shall be notarized. The noncustodial parent shall attach a sworn affidavit with the noncustodial parent's name, address, and telephone number and a statement acknowledging parentage of the child and attesting that consent is given knowingly, freely, and voluntarily with full understanding of the consequences of the consent.

### **37. Home Study and Report on Adoptive Home; Criminal Records Check.—**

(a) **Home Study and Report.** Unless waived by the court, an adoption petition filed by a person who is not a parent shall be supported by a Home Study conducted by the Department of Children, Youth, and Families or a licensed or governmental child placement agency and a report which shall include a recommendation as to the suitability of the prospective adoptive family.

(b) **Referral.** Upon receipt of an adoption petition, the court shall refer the matter to the Department of Children, Youth, and Families for a Home Study on the suitability of the prospective adoptive family unless the petition is accompanied by a motion to waive the Home Study or a completed Home Study.

(c) **Bureau of Criminal Identification.** The petitioner shall apply to the bureau of criminal identification of the state police, the local police department, the Department of Attorney General, or the Department of Children, Youth, and Families for a nationwide criminal records check unless the petitioner has previously submitted to a nationwide criminal records check in accordance with G.L. 1956 §§ 14-1-34, 40-13.2-2, 40-13.2-4, 40-13.2-5, 16-48.1-4, and/or 16-48.1-5. Upon the discovery of any disqualifying information with respect to a prospective adoptive parent, the court shall be so informed by the Department of Children, Youth, and Families or the licensed or governmental child placement agency.

(d) **Contents of the Report.** All investigative reports submitted to the court shall be based on a minimum of two (2) home visits by the Department of Children, Youth, and Families or licensed or governmental child placement agency conducting the home study. All prospective siblings and any other household members, to the extent feasible, shall be interviewed during a home visit. A summary of the Department of Children, Youth, and Families or the licensed or governmental child placement agency's past and present contact with the prospective adoptive family shall be included in the report. The Department of Children, Youth, and Families or the licensed or governmental child placement agency shall include in the report the agency's recommendations for approval or disapproval of the adoption and the reasons for the agency's conclusion. The following information shall be included in all reports submitted to the court:

(1) Identifying information on all household members, including minor children, and the current needs of each child;

(2) Information regarding the prospective adoptive parents' motivation and reasons for the adoption;

(3) Current background information on the prospective adoptive parents, including a written self-assessment;

(4) Child care experience and parenting philosophy of the prospective adoptive parents;

(5) Information regarding past and present marriage and partnership relationships;

(6) Current medical and psychological conditions, including addiction to drugs or alcohol of any prospective adoptive parents, that may be seriously detrimental to the health and welfare of child;

(7) Description of the home and local community, including any health and safety concerns regarding the home;

(8) Information regarding the finances and employment of the prospective adoptive parents;

(9) Reference letters from at least three (3) individuals at least two (2) of whom are non-relatives;

(10) Results of background checks and clearance checks regarding state and federal criminal records conducted on the prospective adoptive parents;

(11) Information related to the prospective adoptive parents' willingness and ability to accept and cooperate with adoption support services, including the level of understanding regarding openness with the birth family; and

(12) Information related to the match between prospective adoptive parents and the child, including attitudes and capabilities of prospective adoptive parents and the child's characteristics and background.



(e) **Waiver.** Provisions of this section may, at the discretion of the court, be waived or modified in the case of a petition for the adoption of a child where the child is the biological child of one (1) of the parties petitioning for the adoption and resides with the petitioning parties.

**38. Judgment or Decree of Adoption.** — (a) **Judgment or Decree.** If, after a Home Study and report, if applicable, and upon a hearing, the court is satisfied as to the identity and relations of the petitioner, that the petitioner is of sufficient ability to bring up the child and furnish suitable nurture and education, having reference to the degree and condition of the petitioner, and that the proposed adoption is fit and proper and that the adoption should take effect, the court shall enter a judgment or decree setting forth the facts and ordering that from the date of judgment the child shall, to all legal intents and purposes, be the child of the petitioner. Copies of the adoption or decree judgment shall be given to the parent at the conclusion of the hearing.

(b) **Name Change.** If a request for a change of the child's name is granted, the court shall order the name change and authorize the Department of Health, Office of Vital Records to prepare a new birth certificate for the child.

(c) **Report of Adoption.** The clerk's office shall report all adoption information to the Department of Health, Office of Vital Records.

**39. Judgment or Decree of Open Adoption.** — (a) **Post-adoption Privileges Agreement.** At the time an adoption judgment is entered, the court may grant post-adoption privileges in accordance with the terms and conditions set forth in G.L. 1956 § 15-7-14.1. If agreed to, a post-adoption privileges agreement shall be executed in writing and filed with the court for each child to whom it applies. A post-adoption privileges agreement must contain an acknowledgement by the parents that the adoption is irrevocable, even if the adoptive parents do not abide by the post-adoption privileges agreement, and an acknowledgement by the adoptive parents that the agreement grants the parents the right to seek to enforce the post-adoption privileges set forth in the agreement. The post-adoption privileges agreement must be signed by all the parties including a representative from the Department of Children, Youth, and Families or the licensed or governmental child placement agency and the guardian ad litem, if one has been appointed. If the child is at least fourteen (14) years of age, the child's written consent to the post-adoption privileges agreement must be obtained. Prior to approving any post-adoption privileges agreement, the parties shall be informed that a judgment or decree of adoption will not be revoked because a parent or an adoptive parent fails to comply with a post-adoption privileges agreement. Upon execution of the post-adoption privileges agreement by all necessary parties and after hearing and approval by the court, the

agreement shall be entered as an order of the court and each party shall receive a copy.

(b) **Enforcement or Modification.** A parent or an adoptive parent may file a motion to modify the post-adoption privileges agreement or to compel a parent or adoptive parent to comply with the post-adoption privileges agreement. The motion shall be served in accordance with Rule 16.

(1) After hearing, the court may void or modify a post-adoption privileges agreement at any time after the adoption if the court determines that the best interests of the child require the voiding or modification of the agreement.

(2) Before hearing a petition to enforce, modify, or void a post-adoption privileges agreement, notice and an opportunity to be heard shall be given to the Department of Children, Youth, and Families or the licensed or governmental child placement agency that sponsored the adoption and to the child's court appointed special advocate or court appointed guardian ad litem if one had been appointed prior to the finalization of adoption.

**40. Challenge to Adoption Judgment or Decree.** — Any challenge or petition to reverse an adoption to give or withhold consent for adoption shall be filed no later than one hundred eighty (180) days after a judgment, decree, or an order is entered.

## V. GENERAL PROVISIONS

**41. Pretrial Conferences and Procedure.** — (a) **Pretrial Conference.** In any action, the court may in its discretion direct the attorneys and any self-represented litigants to appear before the court for a pretrial conference to consider:

- (1) Expediting the disposition of the action;
- (2) Ensuring thorough trial preparation; and
- (3) Facilitating the settlement of the case.

(b) **Pretrial Orders.** At any conference under this rule, the court may consider and take appropriate action with respect to:

- (1) The simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining stipulations, admissions of fact, and of documents to avoid unnecessary proof at trial;
- (4) The limitations of the number of expert and other witnesses; and
- (5) Other matters as may aid in the disposition of the action.

(c) **Compulsory Attendance.** Attorneys and self-represented litigants must attend any conference scheduled by the court. The attorneys and self-represented litigants shall have authority to enter into stipulations and to make admissions regarding all matters that may be discussed.

(d) **Pretrial memorandum.** The court in its discretion may require attorneys and self-represented litigants to file pretrial memoranda at a time to be determined by the court which memoranda may include the following information :

(1) A list of all exhibits that the party intends to offer at trial:

(2) A list of each expert witness that the party intends to present at trial, a brief summary of the expert's testimony including its relevance, and a summary of the expert's qualifications in a form appropriate for submission as an exhibit;

(3) A list of all other witnesses that the party intends to present at trial and a brief summary of the testimony each witness is expected to give as well as a statement of the relevance of the testimony;

(4) A list of all statutory citations that the party intends to present or argue at trial;

(5) A list of all case citations that the party intends to rely upon or argue at trial;

(6) A chronological summary of all facts that the party intends to introduce and support at trial;

(7) A list of undisputed facts and stipulations agreed to by the parties;

(8) A brief statement of each claim for relief and defense asserted by the party; and

(9) Any admissions.

(e) **Exhibits.** The court may order that exhibits be premarked for trial.

(f) **Orders.** The court may make such orders, including the imposition of sanctions, as are necessary to effectuate this rule.

(g) **Consolidation of Petitions.** The court may order two (2) or more petitions to be tried together.

**42. Proof of Official Record.** — (a) **Authentication of Copy.** An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy. If the office in which the record is kept is outside of this state but within the United States or within a territory or insular possession subject to the dominion of the United States, a certificate that such officer has the custody of the record shall be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the office. If the office in which the record is kept is in a foreign state or country, such certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of the office.

(b) **Proof of Lack of Record.** A written statement signed by an officer having the custody of an official record or by the officer's deputy that after diligent search no record or an exact copy of a record is found to exist in the records of that office is admissible as evidence that the records of that office contain no such record or entry, provided that if the record is kept without the state, the statement shall be accompanied by a certificate as required by subdivision (a) of this rule.

(c) **Other Proof.** This rule does not prevent the proof of official records or of entry or lack of entry therein by any method authorized by any applicable statute or by any other method authorized by law.

**43. In Camera Testimony of a Child.** — (a) **Hearings.** In matters not resulting in the potential incarceration of a juvenile or adult, the judicial officer shall have discretion to conduct a hearing in chambers with a child witness, rather than hear testimony in open court, if the judicial officer determines that in camera testimony is in the best interest of the child and necessary due to the child's psychological and emotional needs.

(b) **Competency.** The judicial officer, when exercising discretion to conduct an in camera interview, should consider the child's age and competency to testify. In establishing competency, the court should consider the child's age, whether the child is capable of understanding the oath, and the importance of telling the truth, as well as the child's ability to communicate sufficiently with the judicial officer. The judicial officer must make a determination and specify findings of competency in each case.

(c) **Record.** All in camera interviews shall be on the record.

(d) **Attendance.** In proceedings under this section, the guardian ad litem, Court Appointed Special Advocate, and any other person deemed appropriate may attend the in camera testimony, at the discretion of the judicial officer.

(e) **Self-represented Parties.** The judicial officer shall consider whether the parents are both represented by an attorney or whether the parents are self-represented. If one (1) or both parties are self-represented, in camera testimony should not be conducted. When parties are represented, the role of the parents' attorneys should be defined as part of the in camera process.

(f) **Procedural Process.** The procedural process shall be stated on the record before an in camera interview is conducted. The record shall state whether the parties have agreed or objected to the court conducting an in camera interview of the child and whether the attorneys are permitted to submit questions to the court. The parties shall put on the record an agreement to submit questions or not. If there is an objection, the judicial officer shall determine whether an in camera interview is in the best interest of the child and may overrule any stated objection. When conducting an in camera interview, the judicial officer shall explain the purpose of the interview

to the child and make reasonable efforts to incorporate the attorneys' questions into the judicial officer's inquiry of the child. The judicial officer shall state on the record that the court is not bound by the child's stated preference.

(g) **Questions.** The court, in the court's sole discretion, shall determine what questions shall be posed to the child.

(h) **Transcripts and Court Recordings.** Transcripts and court recordings of the child's testimony may be made available, at a party's own expense, to attorneys active in the case, under whatever confidential restrictions are deemed appropriate by the judicial officer. Provided, however, if the party has been deemed indigent, the transcript shall be provided upon request to the respondent's attorney free of charge.

**44. Expert Witnesses.** — The court may on its own motion or upon the motion of a party order the respondent or the petitioner, or both, to show cause why expert witnesses should not be appointed and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties and may appoint witnesses of the court's own selection. An expert witness shall not be appointed by the court unless the expert witness consents to act. A witness so appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any, and may thereafter be called to testify by the court or by any party. The witness shall be subject to cross-examination by each party. The court may determine the reasonable compensation of such a witness and may direct that the compensation be paid either by the petitioner or by the party who moved for appointment or both. The parties also may call expert witnesses of their own selection.

**45. Interpreters.** — The court may appoint an interpreter of the court's own selection. Compensation for interpreters shall be paid by the State.

**46. Out-of-State Counsel.** — No person, who is not an attorney and counselor of the Supreme Court of the State of Rhode Island, shall be permitted to act as attorney or counselor for any party in any proceeding, hearing, or trial in the Family Court unless granted leave to do so by the Family Court or by the Supreme Court. Unless the Family Court or the Supreme Court permits otherwise, any attorney who is granted such leave to practice before the Family Court shall not engage in any proceeding, hearing, or trial therein unless there is present in the courtroom for the duration of the proceeding, hearing, or trial a member of the bar of Rhode Island who shall be prepared to continue with the proceeding, hearing, or trial in the absence of counsel who has been so granted leave.

Subject to the limitations and exceptions set forth in Article II, Rule 9 of the Supreme Court Rules for the Admission of Attorneys and Others to Practice Law, leave shall be granted by the Family Court, in the court's discretion, upon a miscellaneous petition signed by the petitioner in a form approved by the Supreme Court, supported by certifications of the attorney seeking admission pro hac vice and of Rhode Island associate counsel, and assented to by the party being represented in a client certification. The most current forms for pro hac vice are located on the Judiciary's website at *www.courts.ri.gov* under the heading of Public Resources, Forms.

**47. Time.** — (a) **Computation.** In computing any period of time prescribed or allowed by these rules, by order of court or by an applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday.

(b) **Enlargement.** When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion:

(1) With or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) Upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(c) **For Motions — Affidavits.** A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than six (6) days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, opposing affidavits may be served not later than one (1) day before the hearing, unless the court permits them to be served at some other time.

(d) **Additional Time After Electronic Service or Service by Mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party electronically or by mail, one (1) day shall be added to the prescribed period.

**48. Motions.** — An application to the court for an order shall be by motion. A motion, other than one made during a trial or hearing, shall be in writing unless the

court permits the motion to be made orally. The motion shall state with particularity the grounds upon which the motion is made and shall set forth the relief or order sought. The motion may be supported by affidavit. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

**49. Dismissal.** — No petition shall be dismissed without consent of the court. If there is unnecessary delay in bringing a case to trial, the court may dismiss the petition. Unless otherwise stated, a dismissal before trial shall be without prejudice. A dismissal after trial has commenced shall be with prejudice unless otherwise stated.

**50. Service and Filing of Papers.** — (a) **Service.** When required, written motions other than those which are heard *ex parte*, written notices, designations of record on appeal, and similar papers shall be served upon each of the parties.

(b) **Making Service.**

(1) Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless the court orders service on the party.

(2) For attorneys and self-represented litigants who are Registered Users, service is made electronically using the EFS.

(3) For incarcerated individuals, attorneys who are granted a waiver pursuant to Art. X, Rule 3(c) of the Rhode Island Supreme Court Rules Governing Electronic Filing, and self-represented litigants who do not elect to electronically file pursuant to Art. X, Rule 3(b), service under Rule 5(a) is made by:

(A) Delivering a copy to the person served by:

(i) Handing it to the person;

(ii) Leaving it at the person's office with a clerk or other person in charge; or

(iii) Leaving it at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

(B) Mailing a copy to the last known address of the person served. Service by mail is complete upon mailing.

(C) Any other means ordered by the court.

(c) **Filing; No Proof of Service Required.** All papers required to be served shall be filed with the court either before service or within a reasonable time thereafter. Such filing by a party or party's attorney shall constitute a representation that a copy of the paper has been or will be served upon each of the other parties as required by subdivision (a) of this rule. No further proof of service is required unless an adverse party raises a question of notice. In such instance the affidavit of the person making service shall be *prima facie* evidence of service.

(d) **Filing; Discovery.** All papers after the complaint required to be served upon a party shall be filed with the court within a reasonable time after service, but the following discovery requests and responses shall not be filed with the court until they are used in the proceeding or the court orders the filing of the requests or responses on motion or on the court's own initiative:

- (1) Interrogatories;
- (2) Requests for documents or to permit entry upon land;
- (3) Requests for admission;
- (4) Answers and responses to items (1) through (3) above;
- (5) Notices of deposition; and
- (6) Transcripts of depositions.

(e) **Filing With the Court Defined.** The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judicial officer may permit the papers to be filed with the judicial officer, in which event the judicial officer shall note the filing date and forthwith transmit the pleadings or other papers to the office of the clerk.

(f) **Effect of Failure to File.** If any party to an action fails to file within five (5) days after the service any of the papers required by this rule to be filed, the court, on motion of any party or on the court's own initiative, may order the papers to be filed forthwith, and if the order be not obeyed, the court may order the papers to be stricken and the service to be of no effect.

**51. Subpoena.** — (a) **For Attendance of Witnesses; Form; Issuance.** Every subpoena shall be issued by the clerk of court or a notary public or other officer authorized by statute, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified.

(b) **For Production of Documentary Evidence.** A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:

- (1) Quash or modify the subpoena if the subpoena is unreasonable and oppressive; or
- (2) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) **Service.** A subpoena may be served by a duly authorized officer in accordance with Title 9, Chapter 5 (Writs, Summons, and Process) of the Rhode Island General Laws or by any other person who is not a party and who is not less than eighteen



(18) years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to the person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the state or an officer or agency thereof, fees and mileage need not be tendered. Prior notice of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 16. A subpoena may be served at any place within the state.

(d) **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed to be in contempt of the court in which the action is pending.

**52. Appeals.** — (a) **Appeal to the Supreme Court.** An appeal from a judgment or decree of the Chief Judge or any Associate Justice of the Family Court shall be to the Supreme Court and shall follow the Rules of Appellate Procedure as adopted by the Supreme Court.

(1) *Time for Filing Notice of Appeal.* Every person aggrieved by any decree or judgment may within twenty (20) days after entry of decree or judgment, file a notice of appeal with the court. A copy of the notice of appeal with proof of service shall be forwarded to all attorneys or self-represented litigants of record.

(2) *Motion to Proceed in Forma Pauperis.* A self-represented litigant or an attorney on behalf of a litigant seeking appellate review at public expense must file a motion for an order of indigency, in accordance with applicable rules and administrative orders of the Family Court. Any motion to proceed in forma pauperis must be filed contemporaneously with the notice of appeal.

(3) *Transmission of the Record.* The party seeking review shall order the transcript of the proceedings.

(4) *Appointment of an Attorney.* In accordance with Article I, Rule 7(b) of the Supreme Court Rules of Appellate Procedure, the Family Court may appoint an attorney from the panel of attorneys available for appointment in this category in the Supreme Court and solely for the purpose of perfecting an appeal to the Supreme Court.

(b) **Appeal From a Judgment or Decree of a General Magistrate or Magistrate.**

(1) *Referral of Appeal.* An appeal from a judgment, order, or decree of a general magistrate or a magistrate shall be referred to the chief judge or a designee. The review shall be appellate in nature and on the record.

(2) *Notice of Appeal.* A Notice of Appeal shall be filed with the court within twenty (20) days of the entry of the judgment, order, or decree being appealed. The chief judge may extend the time for filing the Notice of Appeal for good cause. The Notice of Appeal shall specify the parties taking the appeal and shall designate the

judgment, order, or decree being appealed. The most current version of the Notice of Appeal is located on the Judiciary's website at *www.courts.ri.gov* under the heading of Public Resources, Forms.

(3) *Orders*. The chief judge or a designee may make such orders for injunction, stay pending appeal, temporary restraining order, or other orders which may be required for the protection of the rights of the parties until the appeal is heard and decided.

(4) *The Record on Appeal*. Except where otherwise provided, the filings and exhibits admitted into evidence, the transcript of the proceedings, and the docket entries shall constitute the record on appeal.

(5) *Transcripts of Testimony*. Within twenty (20) days of filing the Notice of Appeal, the appellant shall order a transcript of the parts of the proceedings that the appellant deems necessary for inclusion in the record. If the appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall immediately order such parts from the court reporter or seek an order requiring the appellant to do so.

(6) *Statement of Issues and Memorandum of Law*. Within twenty (20) days after the record on appeal is completed, the appellant shall submit a statement of the issues on appeal and a memorandum of law in support of the allegations of error. The appellee shall have twenty (20) days to respond.

(7) *Conferences*. The chief judge or a designee may schedule a conference to identify and narrow the outstanding appellate issues, to explore possibilities for settlement and, if necessary, to schedule further proceedings.

(8) *Power of the Chief Judge or a Designee Not Limited*. Nothing contained in this rule limits the authority of the chief judge or a designee to alter the time frames set forth in this rule when the interests of justice and equity so require.

**53. Miscellaneous Matters.** — Miscellaneous matters under the jurisdiction of the court pursuant to G.L. 1956 §§ 14-1-60, 14-6.2-1, et seq., 15-2-11, 16-2-17, 23-4.7-6, 40.1-5-8, 42-35-15(b), 42-73-7, or otherwise shall be conducted in accordance with the applicable enabling statute, administrative order, or as directed by the chief judge or the chief judge's designee.

**54. Exceptions Unnecessary.** — Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary a party, at the time the ruling or order of the court is made or sought, need only make known to the court the action which the party desires the court to take or the party's objection to the action of the court and the party's grounds therefor if requested; and if a party has no opportunity to object to a ruling or order at the time made, the absence of an objection does not thereafter prejudice the party. With

the consent of the court, a party may object to an entire line of testimony, or to the entire testimony of a witness, or to testimony on a single subject matter, and if such objection shall be overruled, the party need not repeat the objection thereafter, but every part of such testimony thereafter introduced shall be deemed to have been duly objected to and the objection overruled.

**55. Harmless Error.** — Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded.

**56. Regulation of Conduct in the Courtroom.** — The taking of photographs or sketching in the courtroom during the progress of judicial proceedings or radio or television broadcasting of judicial proceedings from the courtroom or audio, visual, or recordings of any kind shall not be permitted by the court.

**57. Records.** — (a) **Clerk of the Court.** The clerk of the court shall keep such records in all proceedings as required by law or by order of the court. In trials in the Family Court all proceedings, including the testimony of witnesses, shall be stenographically or electronically recorded.

(b) **Proceedings.** All proceedings and records relating to these rules are nonpublic or confidential unless released by order of the court or access is permitted by administrative order or statute. This includes any documents that are maintained as part of the file.

**58. Rules of Practice and Orders.** — Rules of practice which may be adopted from time to time by a majority of the justices of the Family Court and administrative orders promulgated by the chief judge to further regulate the practice and conduct of business therein shall be deemed adopted under the power by which these rules are made and promulgated as well as pursuant to such other powers as the court may have. The designation of a rule of practice and the conduct of business as an “order” rather than as a “rule” is for purposes of convenience only and shall have no other effect.

**59. Jurisdiction and Venue Unaffected.** — These rules shall not be construed to extend or limit the jurisdiction of the Family Court or the venue of actions therein.

**60. Effective Date.** — These rules shall take effect on July 1, 2019. They govern all proceedings in actions brought after the rules take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court the application of the rules in a particular pending action when the rules take

effect would not be feasible or would work injustice, in which event the former procedure applies.