

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of September 22, 2017 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee was called to order by Judge Ashby at 9:08 a.m., in the supreme court conference room on the fourth floor of the Ralph L. Carr Colorado Judicial Center. Members present or excused from the meeting were:

Name	Present	Excused
Judge Karen Ashby, Chair	X	
David P. Ayraud	X	
Magistrate Howard Bartlett		X
Cynthia Cavo		X
Jennifer Conn		X
Sheri Danz	X	
Traci Engdol-Fruhworth	X	
Judge David Furman	X	
Ruchi Kapoor	X	
Shana Kloek		X
Wendy Lewis	X	
Judge Ann Meinster	X	
Judge Dave Miller	X	
Chief Judge Mick O'Hara	X	
Trent Palmer	X	
Professor Colene Robinson		X
Magistrate Fran Simonet		X
Judge Traci Slade	X	
Magistrate Kent S. Spangler	X	
John Thirkell	X	
Chief Judge Jeffrey Wilson		X
Non-voting Participants		
Justice Allison Eid, Liaison		X
Terri Morrison	X	
J.J. Wallace	X	

Attachments & Handouts

- (1) Updated Discovery Rules
- (2) Proposed Release Form

Special Guests:

Present from the Discovery Rules Subcommittee were: Cara Nord, Heather Beattie, and Michael Valentine.

II. Chair’s Report

- A. **Next meeting:** The next meeting, scheduled for 11/17/17, is cancelled. Many committee members are not available on that day due to conflicts with National Adoption Day and the Chief Judges’ meeting. A new, all-day meeting date will be set via email to resolve the Discovery Rules. Lunch will be provided.

III. New Business

- A. The August 4, 2017, minutes were approved.

- B. Rule draft: Updated Discovery Rules

Judge Miller, co-chair of the Discovery Rules Subcommittee introduced the subcommittee members attending the meeting and recognized their hard work. He discussed the subcommittee’s processes in arriving at their current draft: they looked at other states with more detailed rules, including Kansas. He and other subcommittee members also reached out to numerous stakeholders and asked for comments. Judge Miller related that, generally speaking, more discovery requests are being made. He said that the civil rules are inadequate and there is a need for something specific to juvenile (he cited as an example, the civil discovery rules focus on obtaining information about damages, which is inapplicable in juvenile). He also said that importing some rules into juvenile, such as C.R.C.P. 35 (Physical and Mental Examination of Persons) was quite controversial and some civil rules have been jettisoned altogether. He finished his introduction by saying that the subcommittee’s proposal does not reflect unanimity among subcommittee members, but it is a product of reaching consensus.

The committee then turned to the discussion of the proposed rules:

Rule 1: no comments

Rule 2: The subcommittee began by saying that it felt that a definitions section was important. Judge Miller commented that the definition of discovery (b) might benefit from stating the scope and limits of discovery (e.g., C.R.C.P. 26(b)(1), but maybe exclude inapplicable descriptions such as “amount in controversy”). The committee agreed scope and purpose was important and asked the subcommittee to consider making it a separate rule to highlight its importance. Also in (b), a committee member pointed out that the proposed rule uses “things,” but in other places in the rules, it says “tangible things” and a suggestion was made to make these references consistent. In (c), the committee suggested staying ““Parties’ for discovery means . . .” to clarify that the definition is only applicable for discovery. Another committee member pointed out that using the word “Parties” generally causes debate and the suggestion was made to avoid use of the word “parties” and instead always use individual references: Petitioner, Respondents, GAL, Intervenors, etc. The committee also suggested ending the sentence

at Intervenors, then having a new sentence describing a catchall for other case participants and giving the court discretion to decide whether special case participants need to receive/provide disclosures and discovery.

Rule 3: The subcommittee used the word “Delivery” in the heading of the rule to avoid confusion with “Service” or “Service of Process.” The committee debated this decision. Some committee members believed that this rule should be revised to better reflect the manner in which parties currently provide disclosures and discovery and should include contemporary cost-saving methods such as email or courthouse mailboxes.

Rule 4: Both the subcommittee and the committee members are sensitive to costs of disclosures. County Attorneys explained that, because some of their information contains sensitive information or information that must be redacted by law, disclosures are a labor-intensive requirement for them. Some offices have workers whose primary job responsibilities involve redacting and preparing disclosures. They would prefer a request for disclosures (not an automatic requirement) because the disclosures may not be needed in every case and they would be a heavy burden for their offices in every case. OCR committee members stated that the costs they must pay for disclosures/discovery are wildly inconsistent across the state and would like to see automatic, uniform disclosures. RPC members indicated that they also noted inconsistencies, but the office was currently budgeting for costs on a per page basis. Some RPCs only want access to look at the department’s file; other RPCs want a paper copy of everything. ORPC would also like to see uniformity and automatic execution. The committee and subcommittee agreed that this is an area where the civil rules are not particularly helpful. There was a discussion about making disclosures automatic for some hearings (e.g. temporary custody hearings), but not for others. There was also a question raised about whether rules were needed for disclosures-were we solving a problem or creating one? Ruchi Kapoor mentioned that ORPC had toured the state asking what issues RPC saw in all the jurisdictions. She said she’d try to locate that information to identify what problems, if any, were related to disclosures. Judge Miller and the subcommittee members would like more feedback in this area. He invites everyone to pass along his email to those wishing to provide feedback. Judge Ashby invited all committee members to reach out to people they work with to ask: what do you currently do for disclosures? Is a disclosure rule needed to improve the process? At this point, the committee discussed the inconsistencies throughout the state and believed standardized practices-particularly timeframes-would be beneficial. The committee asked if the subcommittee (and committee members) could also think about creating a list of essential disclosures keeping in mind sections 19-1-303 and 19-1-307. For example, it was suggested that family risk assessments or family safety assessment and history of DHS involvement should be disclosed. The committee also suggested that there could be an opt-out of disclosures provision for some participants (e.g. suspected fathers). The committee also felt a sanctions component was important, but tricky given the case type. See also People in Interest of L.K., 2016 COA 112 (cert granted Nov. 7, 2016) (concluding that an award of attorney fees as a discovery sanction against county violated sovereign immunity). For timeframes, the committee suggested that, rather than requiring that a request be made by a certain time (e.g. a request must be made 35

days before a contested hearing), the rule should instead just provide a response time (e.g. 14 days after a request is made, the disclosure/discovery item is due) leaving the burden on the requesting party to make a timely request.

Judge Ashby thanked the committee members for their active engagement. She also thanked Judge Miller and his hard-working subcommittee members. The Committee adjourned at 11:52 p.m.

*Respectfully Submitted,
J.J. Wallace*