

Supreme Court of Colorado

2 EAST 14TH AVENUE
DENVER, CO 80203
(720) 625-5460

NANCY E. RICE
CHIEF JUSTICE

Colorado Rules of Juvenile Procedure Revision Committee

Purpose: Review the CRJP, making changes to update the rules, eliminate unnecessary rules, draft new rules to address anticipated legislation. Send draft of proposed rules to criminal and civil rules committees by September 1, 2014.

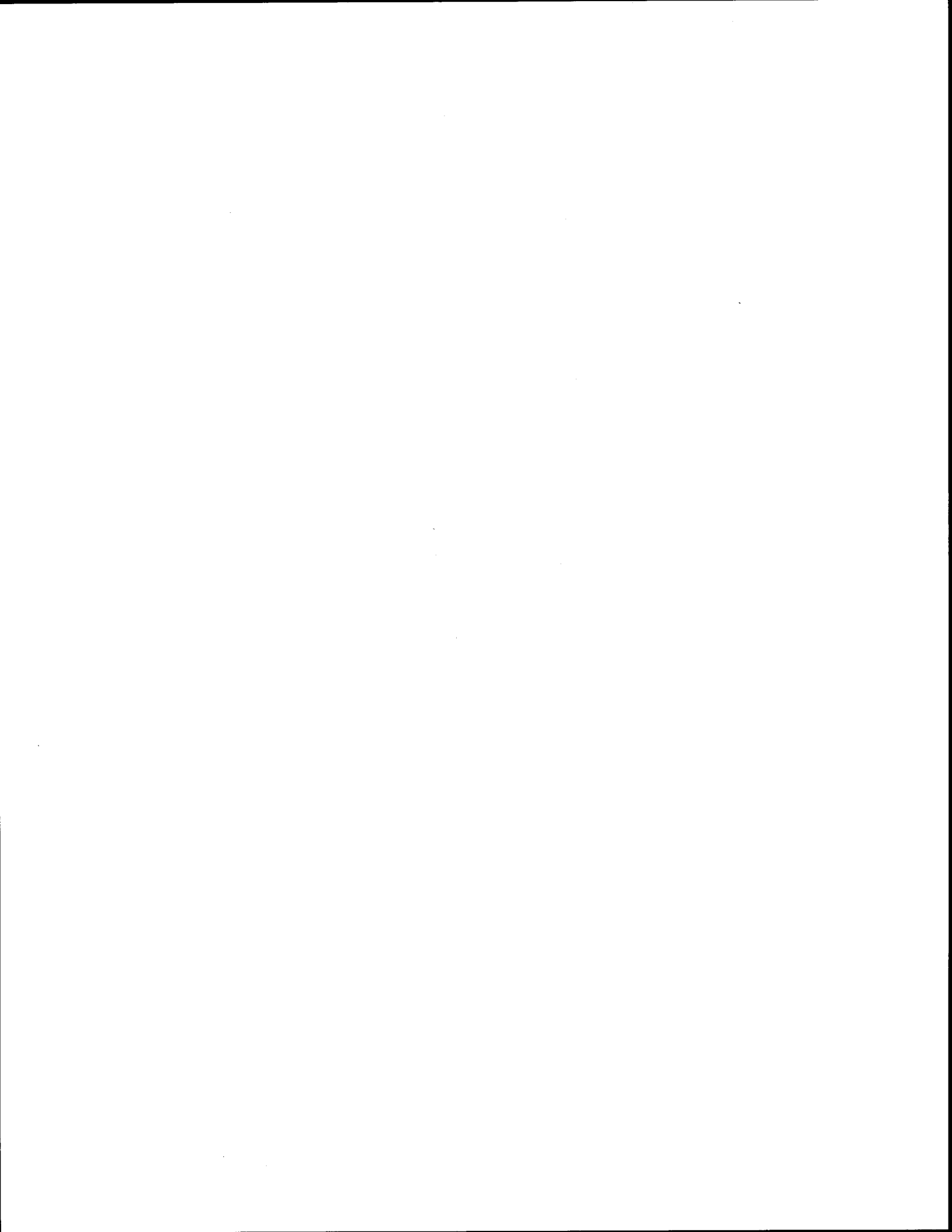
Charging authority: Chief Justice Rice

Specific Tasks:

- Review current rules.
- Update rules based on anticipated legislation which may include an advisement of rights for a detention hearing and an advisement for waiver of counsel in JD cases
- Look at current language with regard to e-filing in the near future
- Determine if any current rules are no longer necessary
- Look at the structure of the rules – is the division of the rules sections helpful?
- Review the interplay between the rule on jury trials and time limits in statute

Membership:

- Chair: Judge Karen Ashby, Court of Appeals
- Judge Douglas Vannoy, District Judge, 13th Judicial District
- Magistrate Fran Simonet, Magistrate, 17th Judicial District
- Chief Judge Doug Walker, 22nd Judicial District
- Chief Judge Mick O'Hara, 14th Judicial District
- Judge Ann Meinster, District Judge, 1st Judicial District
- Judge Jeffrey Wilson, District Judge, 6th Judicial District
- Magistrate Bonnie McLean, Magistrate, 18th Judicial District
- Judge David Miller, 4th Judicial District
- Magistrate Howard Bartlett, Denver Juvenile Court



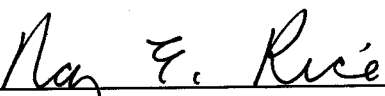
The work of this committee should be presented to the civil rules committee and the criminal rules committee for comment before sending the rules to the Court for a decision on the rules. Additionally, there may be external persons who are not members of the Colorado Rules of Juvenile Procedure Revision Committee who could be consulted or added to subcommittees, at the chair's discretion. Jenny Moore, Deputy Supreme Court Librarian, will staff the rules revision committee.

Effective date of the order:

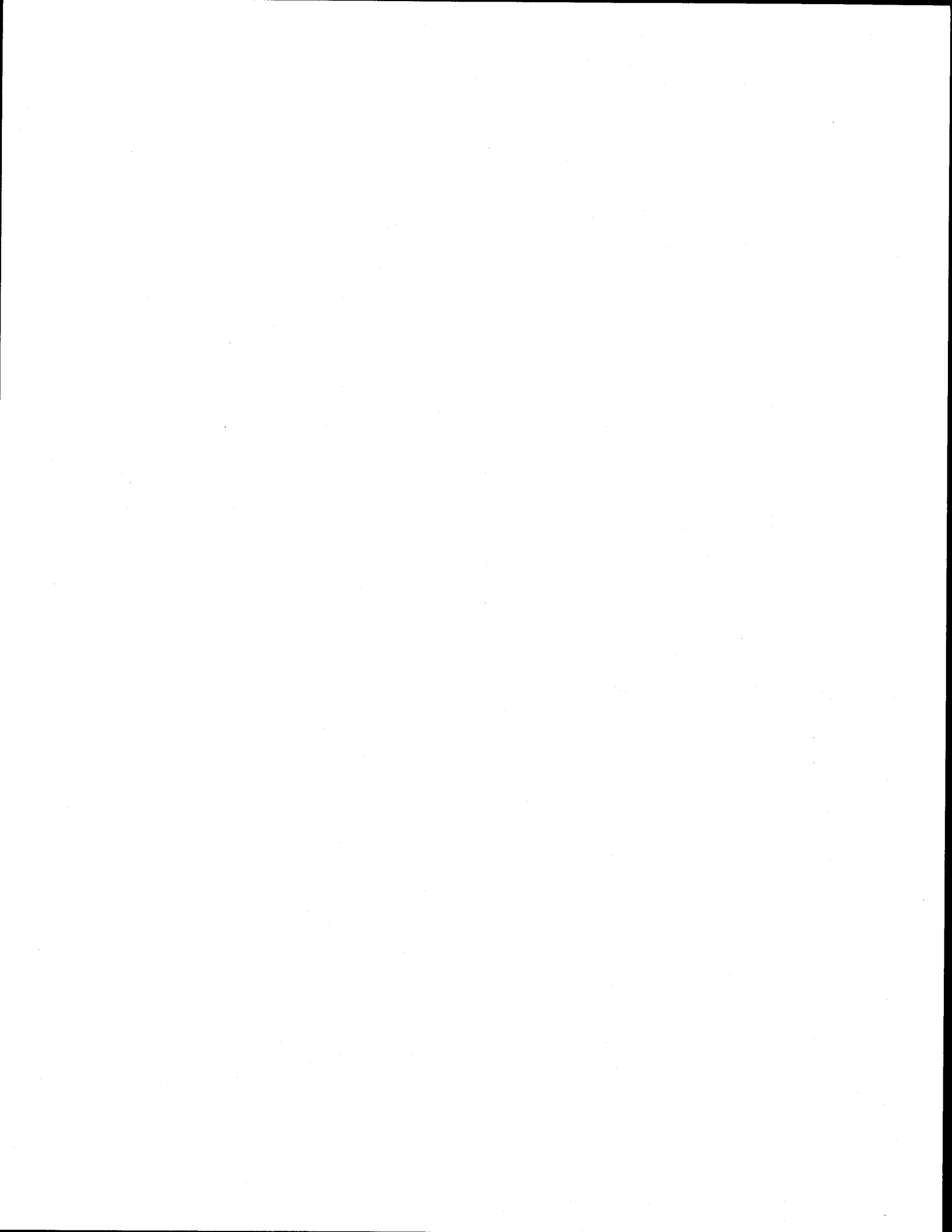
May 1, 2014

Signature of the establishing authority:

Done at Denver Colorado, this 29 day of April, 2014.



Nancy E. Rice
Chief Justice Colorado Supreme Court



**Colorado Supreme Court Juvenile Rules Revision Committee
Minutes of June 12, 2015 Meeting**

A quorum being present, the Juvenile Rules Revision Committee was called to order by Judge Karen Ashby at 1:30 p.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	
Charlene Benton	X	
Kelly Boe	X	
Vivian Burgos	X	
Jennifer Conn	X	
Traci Engdol-Fruhwirth	X	
Shana Kloek	X	
Kendall Marlowe	X	
Tom Maxwell	X	
Judge Ann Meinster		X
Judge Dave Miller	X	
Lauren Mueller	X	
Chief Judge Mick O'Hara		X
Professor Colene Robinson	X	
Magistrate Fran Simonet	X	
Judge Teresa Slade	X	
Karen Stall	X	
John Thirkell	X	
Judge Douglas Vannoy	X	
Chief Judge Doug Walker	X	
Judge Jeffrey Wilson	X	
Non-voting Participants		
Justice Allison Eid, Liaison	X	
Terri Morrison	X	

- I. Attachments & Handouts**
 - A. June 12 Agenda
 - B. May 2015 Survey Results

II. Announcements from the Chair

The Juvenile Rules Revision Committee was formed on April 29, 2014 to amend existing and enact new court rules in response to HB 14-1032, *Defense Counsel for Juvenile Offenders*. The committee was initially composed of 10 members, all of whom were jurists, and in the summer of 2014 it met four times. HB 14-1032 contained statutory amendments that affected juvenile justice procedures and as a result the committee amended Colorado Rules of Juvenile Procedure 2.2, 3, 3.7, and drafted a new rule, Rule 3.9. Also, two new forms for judicial use were created. These rules were adopted by the supreme court effective November 1, 2014.

With the initial project completed, the committee decided to begin planning a large-scale revision of the Juvenile Rules. Membership was expanded to include attorneys, county attorneys, guardians ad litem, district administrators, clerks of court, law professors, and other subject area specialists. This was the first meeting since membership had been expanded and Judge Ashby welcomed all new members.

III. Business

A. Colorado Rules of Juvenile Procedure Revision Project

Judge Ashby began by addressing the parameters of the project. She emphasized that the committee is drafting procedural rules that are substantively neutral; the rules shouldn't benefit a certain legal interest, but instead implement legislation from the Children's Code. In regards to drafting, the larger committee would break off and form subcommittees. The Dependency and Neglect (D&N) rules will be revised first. When the D&N rules are completed, the committee will move on to a different Juvenile Rule type and membership of the committee will be modified as appropriate.

B. Survey Results

A survey was sent out in May 2015 asking various stakeholders their opinions on the Colorado Rules of Juvenile Procedure. After viewing the survey results Judge Ashby asked members for their thoughts. Many members thought that creating D&N discovery rules was a priority. Also, after new rules are created they will need to be implemented with assistance in the form of CLEs, articles, and judicial conference presentations. Additionally, most members agreed that the rules have large gaps in coverage and little consistency.

C. Subcommittees

Judge Ashby explained that the committee will break off and form subcommittees to work on assigned issues. The subcommittee chairs will be committee members, while subcommittee membership may consist of committee and non-committee members. Therefore, subcommittees can include membership outside of the committee as each subcommittee chair deems appropriate. Subcommittees will meet between regular committee meetings and present as to the subcommittee's progress at each committee

meeting. Subcommittee updates may include bringing rule drafts, questions, and any policy-related matters or issues requiring input from or resolution by the committee

Judge Ashby asked the committee what would be the best way to organize the D&N rules revision. It was decided that each subcommittee should be assigned one of the following stages of a D&N proceeding: 1) Case Commencement; 2) Pre-Adjudication; 3) Adjudication; 4) Dispositional Review; 5) Permanency Planning; 6) Termination; and 7) Post-Termination. As well as the stages of the proceeding, other issues might be best set aside for a separate committee, such as D&N discovery rules. Keeping all of these comments in mind a plan will be presented at the next committee meeting.

D. Protocols

Each meeting will have an agenda, and items related to the D&N rule revision project will appear on the agenda until finalized. As other juvenile rules-related issues are brought to the committee's attention it will decide, through discussion at future meetings of the committee, if, when, and how to incorporate those matters into the work of the committee.

IV. Future Meetings

August 7, 2015

November 6, 2015

The Committee adjourned at 3:00 p.m.

*Respectfully submitted,
Jenny A. Moore*

**Colorado Supreme Court Juvenile Rules Revision Committee
Minutes of August 7, 2015 Meeting**

A quorum being present, the Juvenile Rules Revision Committee was called to order by Judge Karen Ashby at 1:30 p.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
Charlene Benton	X	
Kelly Boe		X
Vivian Burgos		X
Jennifer Conn	X	
Traci Engdol-Fruhwirth	X	
Shana Kloek	X	
Kendall Marlowe	X	
Tom Maxwell	X	
Judge Ann Meinster	X	
Judge Dave Miller	X	
Lauren Mueller	X	
Chief Judge Mick O'Hara	X	
Professor Colene Robinson	X	
Magistrate Fran Simonet	X	
Judge Teresa Slade	X	
Karen Stall	X	
John Thirkell	X	
Judge Douglas Vannoy	X	
Chief Judge Doug Walker		X
Judge Jeffrey Wilson	X	
Non-voting Participants		
Justice Allison Eid, Liaison		X
Terri Morrison	X	

- I. Attachments & Handouts**
 - A. August 7, 2015 agenda
 - B. June 12, 2015 minutes
 - C. National Council of Juvenile and Family Court Judges' Resolution
 - D. Juvenile Shackling letters

II. Announcements from the Chair

Chief Judge Doug Walker has resigned from the committee. Judge Ashby recognized and thanked Chief Judge Walker for his service, and his position on the committee will be filled.

A Doodle poll will be circulated in the next week to select the 2016 meeting dates. Based on availability the meetings will take place at either 9:30am or 1:30pm in the Carr Center.

III. New Business

A. Juvenile Shackling

Judge Ashby began by referencing three documents sent to members before the meeting: two letters from the State Public Defender Doug Wilson asking the committee to draft a juvenile shackling court rule and the Nation Council of Juvenile and Family Court Judges' July 25, 2015 Resolution condemning juvenile shackling. Judge Ashby asked Terri Morrison to give some background information on the efforts to legislatively address juvenile shackling.

Last legislative session, HB 15-1091, *Policies on Juvenile Shackling in Court*, was introduced, and after passing the House, the bill was assigned to the Senate Committee on State, Veterans, and Military Affairs where it was postponed indefinitely. As an alternative to legislative action, the Chief Justice asked the chief judge of each judicial district to enact a policy regarding juvenile shackling. As of today, 18 judicial districts have enacted a policy, and a juvenile shackling presentation will be held at Judicial Conference this September.

Judge Ashby opened discussion by asking the committee the following questions: 1) is juvenile shackling an appropriate issue for a court rule?; 2) is the timing right, due to the fact that steps have been taken to address the issue?; and 3) if the committee believes action is necessary, when should the committee act, given that it has committed to amend the Dependency and Neglect (D&N) rules as its first order of business?

Some members thought that juvenile shackling wasn't an appropriate topic for a court rule, because it's a courthouse security issue. Also, with different judicial facilities and security protocols a state-wide rule could be hard to implement. Members, from judicial districts that have drafted a plan, described the time and care in creating a policy specific to their district. When asked if shackling was used in the policies drafted, some policies use shackling in transport, but not in the courthouse. There is generally a presumption against shackling, but, it was admitted that both the sheriffs' and the public defenders' offices have concerns with the judicial polices that have been enacted.

After further discussion, the committee decided it would wait until each judicial district submitted a policy and if a legislative remedy would be pursued in 2016. A motion to table this issue until the first meeting of 2016 passed unanimously.

B. D&N Subcommittees

Initially, three issues were brought up: 1) would each juvenile rule type have a separate scope, purpose, and construction section?; 2) how would the ICWA requirements be handled?; and 3) how would evidentiary issues be handled?

It would be hard to craft scope, purpose, and construction language that was appropriate for each juvenile rule type; for instance, a scope, purpose, and construction section that would be appropriate for the D&N rules wouldn't be applicable for the truancy rules. The committee decided that each juvenile rule type needed to have its own scope, purpose, and construction section. For the D&N rules, the Case Commencement Subcommittee will draft the scope, purpose, and construction section.

Regarding the Indian Child Welfare Act (ICWA), the discussion was about where to put ICWA requirements. Either all ICWA requirements could be in one rule, or the requirements could be referenced in various rules where appropriate. There was a motion to put all ICWA requirements in one rule, so if practitioners had an ICWA case, they could look to one rule to answer their questions. That motion failed with only 4 yes votes. There was a motion made to place all ICWA requirements in various rules where appropriate, and that passed.

Finally, it was decided that each subcommittee will deal with evidentiary issues that are pertinent to their assigned stage of the case.

At the last meeting the committee discussed creating subcommittees to begin the D&N rule revision project, where each subcommittee would be tasked with drafting rules specific to a stage of a D&N case. The subcommittees and co-chairs are as follows:

1. Case Commencement, co-chaired by Judge Wilson and Shana Kloek;
2. Pre-Adjudication, co-chaired by Judge Slade and Traci Engdol-Fruhworth;
3. Adjudication, co-chaired by Judge Vannoy and David Ayraud;
4. Discovery, co-chaired by Judge Miller and John Thirkell;
5. Permanency Planning, co-chaired by Judge Meinster and Professor Colene Robinson;
6. Dispositional Review, co-chaired by Magistrate Simonet and Jennifer Conn;
7. Termination, co-chaired by Chief Judge O'Hara and Magistrate Bartlett; and

8. Post-Termination, co-chaired by Judge Ashby and Kendall Marlowe.

Judge Ashby asked the co-chairs to meet with their subcommittees between now and the November meeting. At the November meeting the subcommittees will update the committee on their activities and discuss problems or issues that initially arose. Judge Ashby thanked the committee for their hard work and commitment to this project.

IV. Future Meetings
November 6, 2015

The Committee adjourned at 3:30 p.m.

Respectfully submitted,
Jenny A. Moore

**Colorado Supreme Court Juvenile Rules Revision Committee
Minutes of November 6, 2015 Meeting**

A quorum being present, the Juvenile Rules Revision Committee was called to order by Judge Karen Ashby at 1:30 p.m., in the Full Court Conference Room on the third 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	
Charlene Benton	X	
Kelly Boe	X	
Vivian Burgos		X
Jennifer Conn	X	
Traci Engdol-Fruhwirth	X	
Shana Kloek	X	
Kendall Marlowe		X
Tom Maxwell	X	
Judge Ann Meinster	X	
Judge Dave Miller	X	
Lauren Mueller		X
Chief Judge Mick O'Hara	X	
Professor Colene Robinson	X	
Magistrate Fran Simonet	X	
Judge Teresa Slade	X	
Karen Stall	X	
John Thirkell		X
Judge Douglas Vannoy		X
Judge Jeffrey Wilson	X	
Non-voting Participants		
Justice Allison Eid, Liaison		X
Terri Morrison	X	

- I. Attachments & Handouts**
 - A.** November 6, 2015 agenda
 - B.** August 7, 2015 minutes

II. Announcements from the Chair

Judge Ashby reminded the committee that beginning in 2016 committee meetings will begin at 9:30.

III. New Business

A. Scope of Subcommittees' work

Numerous questions were raised regarding where one subcommittee's work ended and another subcommittee's work began. It was decided that subcommittees with overlapping issues will contact each other and decide who's doing what. Please copy Judge Ashby when subcommittees are dividing up overlapping issues.

B. ICWA

The committee decided an ICWA subcommittee needed to be formed, comprised of people with substantial ICWA experience. The committee discussed again whether there should be one ICWA rule or if ICWA provisions should be every appropriate rule. After the new ICWA subcommittee is formed the committee will discuss how the subcommittee will function. Members with candidate recommendations for the ICWA subcommittee should forward them to Judge Ashby.

C. Subcommittee updates

Every subcommittee had met at least once and subcommittee updates are as follows:

1. Case Commencement, rules had been drafted and sent to the subcommittee for comment;
2. Pre-Adjudication had met twice and they were still discussing various issues;
3. Adjudication had sent out a survey to gather more information and were still discussion issues related to privilege and confidentiality, timelines, and disclosure;
4. Discovery was adding specific discovery and disclosure rules, as well as a general discovery rule. It was acknowledged that each subcommittee will have discovery and disclosure issues, and that in the future there will be communication regarding overlapping discovery issues;
5. Permanency Planning, the subcommittee had discussed many things to include contested permanency, PHOM, and certification issues;
6. Dispositional Review, had questions related to ICWA, time frames, Better Business Practices, and district plans;
7. Termination had no recommended rule changes, however, the committee had a few areas for the subcommittee to consider, to include an abandonment affidavit, default deadline, motion for expert witness, when a parent confesses motion for termination, and summary judgment; and

8. Post-Termination was drafting post-termination and reinstatement rules.

Judge Ashby encouraged members to bring issues or problems to the attention of the larger committee.

IV. Future Meetings

March 11, 2016

The Committee adjourned at 3:20 p.m.

Respectfully submitted,

Jenny A. Moore

**Colorado Supreme Court Juvenile Rules Revision Committee
Minutes of March 11, 2016 Meeting**

A quorum being present, the Juvenile Rules Revision Committee was called to order by Judge Karen Ashby at 1:30 p.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
Charlene Benton	X	
Gina Bischofs		X
Kelly Boe		X
Vivian Burgos		X
Jennifer Conn	X	
Traci Engdol-Fruhworth	X	
Shana Kloek		X
Kendall Marlowe		X
Tom Maxwell	X	
Judge Ann Meinster	X	
Judge Dave Miller	X	
Lauren Mueller		X
Chief Judge Mick O'Hara	X	
Professor Colene Robinson		X
Magistrate Fran Simonet		X
Judge Teresa Slade	X	
Karen Stall		X
John Thirkell		X
Judge Douglas Vannoy	X	
Judge Jeffrey Wilson	X	
Non-voting Participants		
Justice Allison Eid, Liaison	X	
Terri Morrison	X	

- I. Attachments & Handouts**
 - A.** March 11, 2016 agenda
 - B.** November 6, 2015 minutes

II. Announcements from the Chair

- Judge Ashby reminded the committee that the May, August, and November committee meetings will be held at 9:30.
- Gina Bischofs had been appointed to the committee, and she has agreed to chair the ICWA subcommittee.

III. Old Business

A. Juvenile Shackling

After a failed legislative attempt last year, each judicial district was drafting a juvenile shackling plan. The committee had decided to revisit juvenile shackling after all district plans were submitted and when it knew whether or not a legislative remedy would be pursued in 2016. Since the last meeting, House Bill 1331, Concerning the Use of Restraints on a Juvenile during a Court Proceeding, had been introduced. The bill requires restraints on a juvenile to be removed before any court proceeding, except when the court determines the restraints are necessary to prevent: physical harm to the juvenile or others; disruptive courtroom behavior, evidenced by a history of such behavior; or, escape. An attorney must be given the opportunity to be heard and the hearing may be conducted without the presence of the juvenile. Ms. Morrison will keep the committee updated on the status of the bill.

B. Subcommittee Updates

1. Case Commencement has drafts ready to be circulated to the larger committee. They have drafted the following rules: scope and applicability; search warrant for a child; report of abuse and neglect, which includes an automatic advisement for contempt; temporary custody; and emergency protection. They still need to draft forms and they are working on a definition section. When asked what the biggest change was, the subcommittee said it was the contempt proceeding; they tried to follow the statutes without repeating them.
2. Pre-Adjudication reported that they have drafts ready to be circulated to the larger group. Pre-Adjudication worked with the Case Commencement and Discovery Subcommittees to ensure that overlapping issues were divided up.
3. Discovery has a working draft. Initially a lot of time was spent on the philosophy and public policy behind the rules. The issues that still need to be addressed are: privilege; confidentiality; waiver mechanisms; a release form (one has been drafted but it needs further review by the subcommittee); inadvertent disclosure; privilege logs; sanctions; and, mandatory disclosures. The rules that have been drafted to mirror the civil rules, but the rules have been tailored to a D&N docket. The Subcommittee has working drafts, but is not prepared to send anything to the larger group. In the future the subcommittee might want to run certain issues by the committee.
4. Adjudication has drafted nine rules. The rules cover: parties; responsive pleadings and motions; summary judgment; the adjudicatory hearing; jury trials; consolidation and separate trials; evidence; time and continuance; and informal adjustments. Topics still to

be covered are: continued adjudication; adjudication by default; and adjudication by admission or stipulation. The subcommittee has reached out to the Discovery Subcommittee for guidance on certain issues. Judge Ashby asked if the right to appear by phone or otherwise remotely would be added to the adjudicatory hearing? Judge Vannoy said that yes, absentee testimony has been included in the evidence rule and references CRCP 43. The evidence rule also includes evidence provisions in the children's code.

5. Dispositional Review has a few rules and outlines. They broke the disposition rules into a few categories, to include timing and the treatment plan. Drafts are forthcoming.
6. Permanency Planning has drafted two rules; one covering the initial permanency hearing and the second on a subsequent hearing. Section 19-3-702, C.R.S. doesn't address a contested evidentiary hearing, and this has been an issue for the subcommittee. A majority of the subcommittee doesn't believe there is a right to a contested evidentiary hearing at the permanency hearing. However, the subcommittee is still studying the issue.
7. Termination had flagged a few issues related to disclosure and discovery that need to be addressed by the Termination Subcommittee or the Discovery Subcommittee. Also, the subcommittee is working on presumptions or consequences for failure to appear, and procedures and party roles at a default hearing. One suggestion for the subcommittee was to look at offers of proof/statements of fact at the termination hearing.
8. Post-Termination went through §19-3-606, C.R.S. and decided what needs to be added to the Post-Termination rule. The Subcommittee had focused on identifying the parties (the court, GAL, and DHS) and the duties of each party at every stage of a post-termination hearing. The subcommittee's goal is to be specific in stating each party's responsibilities. Also, the subcommittee is thinking of adding a comment to the rule.

Judge Ashby encouraged members to bring issues or problems to the attention of the larger committee, and she thanked all members for all of their hard work and commitment.

IV. Future Meeting
May 6, 2016

The Committee adjourned at 3:00pm

Respectfully Submitted,
Jenny Moore

**Colorado Supreme Court Juvenile Rules Revision Committee
Minutes of May 6, 2016 Meeting**

A quorum being present, the Juvenile Rules Revision Committee was called to order by Justice Allison Eid at 9:30 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
Charlene Benton		X
Gina Bischofs	X	
Kelly Boe	X	
Vivian Burgos		X
Jennifer Conn	X	
Traci Engdol-Fruhworth	X	
Shana Kloek	X	
Kendall Marlowe	X	
Tom Maxwell	X	
Judge Ann Meinster	X	
Judge Dave Miller	X	
Lauren Mueller		X
Chief Judge Mick O'Hara	X	
Professor Colene Robinson	X	
Magistrate Fran Simonet	X	
Judge Teresa Slade	X	
Karen Stall	X	
John Thirkell		X
Judge Douglas Vannoy	X	
Judge Jeffrey Wilson	X	
Non-voting Participants		
Justice Allison Eid, Liaison	X	
Terri Morrison	X	

- I. Attachments & Handouts**
 - A. May 6, 2016 agenda
 - B. March 11, 2016 minutes

II. Announcements from the Chair

- The March 11, 2016 minutes were approved as submitted;
- The Juvenile Shackling Bill, HB 16-1331, was postponed indefinitely; now it may be time to consider what, if any, action the committee will take; and
- Judge Vannoy, one of the founding members of the Juvenile Rules Committee, was retiring from the bench effective July 1, 2016. Judge Ashby thanked Judge Vannoy for his service to the committee and wished him well in retirement.

III. Old Business

Subcommittee Updates

The Case Commencement, Adjudication, and Permanency Subcommittees presented preliminary drafts for the committee to review. The committee discussed the drafts and asked questions. Moving forward, meetings will be devoted to discussing, editing, and voting on rules submitted.

IV. Future Meeting

August 12, 2016

The Committee adjourned at 11:30 am

*Respectfully Submitted,
Jenny Moore*

**Colorado Supreme Court Juvenile Rules Revision Committee
Minutes of August 12, 2016 Meeting**

A quorum being present, the Juvenile Rules Revision Committee was called to order by Judge Karen Ashby at 9:30 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	
Charlene Benton		X
Gina Bischofs	X	
Kelly Boe		X
Vivian Burgos		X
Jennifer Conn		X
Traci Engdol-Fruhworth		X
Shana Kloek	X	
Kendall Marlowe		X
Judge Ann Meinster	X	
Judge Dave Miller	X	
Lauren Leeman		X
Chief Judge Mick O'Hara	X	
Professor Colene Robinson		X
Magistrate Fran Simonet	X	
Judge Teresa Slade	X	
Karen Stall	X	
John Thirkell	X	
Judge Jeffrey Wilson	X	
Non-voting Participants		
Justice Allison Eid, Liaison	X	
Terri Morrison	X	

I. Attachments & Handouts

- A. August 12, 2016 agenda
- B. May 6, 2016 minutes

II. Announcements from the Chair

- The May 6, 2016 minutes were approved as submitted; and
- The 2017 meeting schedule will be circulated shortly. The committee will likely meet every other month instead of quarterly.

III. Old Business

A. Juvenile Shackling

Terri Morrison stated she will update the committee if a juvenile shackling bill is introduced in the 2017 legislative session.

B. Subcommittee Updates

Judge Wilson, chair of the Case Commencement subcommittee, presented the subcommittee's drafts. Throughout the presentation he received notes, comments, and questions from the committee. He will take all notes back to the subcommittee and revise accordingly. The Adjudication and Discovery rules were on the agenda, but the entire meeting was spent on the Case Commencement rules. The other rules will be taken up at a future meeting.

IV. Future Meeting

November 4, 2016

The Committee adjourned at 12:00 p.m.

*Respectfully Submitted,
Jenny Moore*

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of November 4, 2016 Meeting**

The Rules of Juvenile Procedure Committee was called to order by Justice Allison Eid at 9:34 a.m., in the court of appeals full court conference room on the third floor of the Ralph L. Carr 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	
Kelly Boe		X
Jennifer Conn	X	
Traci Engdol-Fruhwith	X	
Judge David Furman	X	
Ruchi Kapoor	X	
Shana Kloek	X	
Judge Ann Meinster	X	
Judge Dave Miller		X
Lauren Leeman	X	
Chief Judge Mick O'Hara		X
Professor Colene Robinson	X	
Magistrate Fran Simonet		X
Judge Teresa Slade	X	
Magistrate Kent S. Spangler	X	
Karen Stall	X	
John Thirkell	X	
Judge Jeffrey Wilson	X	
Non-voting Participants		
Justice Allison Eid, Liaison (Acting Chair)	X	
Terri Morrison		X
J.J. Wallace	X	

Attachments & Handouts

- (1) Discovery Subcommittee Proposal
- (2) Adjudication Subcommittee Proposal

I. Call to Order

Justice Eid, acting chair, called the meeting to order. The minutes from the 8/12/16 meeting were approved without additions or corrections.

II. Chair's Report

A. **Next meeting:** January 20, 2017 @ 9:30 Supreme Court Conference Room, 4th floor.

B. Introductions:

- i. Justice Eid introduced the new staff attorney assigned to assist the committee, J.J. Wallace. She is available as a resource to assist the committee and its subcommittees. Please invite her to your subcommittee meetings and if you need assistance, research, help organizing, anything- just ask J.J.
- ii. Justice Eid also introduced the new members of the committee: Judge Furman, Magistrate Spangler, and Ruchi Kapoor.

III. Old Business

A. Draft Rules

i. Discovery Subcommittee Proposal-John Thirkell

John Thirkell, co-chair of the discovery subcommittee, together with subcommittee members Cara Nord, Joe Pickard, & Tim Eirich presented their draft rules. They stated that the subcommittee sought input from a mix of people who serve in different roles to obtain varied points of view. They related that the subcommittee worked hard to find balance in its proposal and the subcommittee ended up compromising in several areas. They highlighted the subcommittee's key concepts: (1) identifying the difference between confidentiality and privilege (and providing mechanisms to allow for the former and to protect the latter); (2) identifying required disclosures by the petitioner; (3) providing discovery mechanisms; and (4) providing timeframes.

Throughout the presentation of the individual rules, the subcommittee members received notes, comments, and questions from the committee members. The subcommittee members will take all notes back to the subcommittee and revise their proposal.

The subcommittee members also provided their emails in its proposal packet and welcomes further written feedback from committee members.

ii. Adjudication-David Ayraud

Tabled to next committee meeting.

B. Other Business

- i. The Case Commencement Subcommittee has proposed an updated rule on the procedures surrounding the filing of a D&N case. J.J. will circulate the new version of the rules via email and the committee will have an email discussion about it to provide feedback on the new version of the rules.

IV. Future Meeting

January 20, 2017 @ 9:30 AM, Supreme Court Conference Room, 4th floor, Ralph L. Carr
Judicial Center

The Committee adjourned at 11:38 a.m.

Respectfully Submitted,
J.J. Wallace

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of January 20, 2017 Meeting**

The Rules of Juvenile Procedure Committee was called to order by Judge Ashby at 9:40 a.m., in the supreme court conference room on the fourth floor of the Ralph L. Carr 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
Kelly Boe		X
Jennifer Conn	X	
Traci Engdol-Fruhworth		X
Judge David Furman	X	
Ruchi Kapoor	X	
Shana Kloek		X
Judge Ann Meinster	X	
Judge Dave Miller	X	
Lauren Leeman	X	
Chief Judge Mick O'Hara		X
Professor Colene Robinson		X
Magistrate Fran Simonet	X	
Judge Traci Slade	X	
Magistrate Kent S. Spangler	X	
Karen Stall		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) Adjudication Subcommittee Proposal
- (2) 11/4/16 Meeting Minutes

I. Call to Order

II. Chair's Report

- A. **Next meeting:** March 24, 2017 @ 9:30 AM Supreme Court Conference Room, 4th floor
- B. **Approval of 11/4/16 meeting minutes:** After a motion was made and seconded, the committee approved the last meeting minutes unanimously.

III. Old Business

A. Draft Rules

i. **Adjudication Proposal-David Ayraud & Subcommittee Members Ret. Judge Doug Vannoy, Sheri Danz (from OCR), and Amanda Lindsey (CJA).**

Judge Ashby noted that if any committee members had identified typos or wanted to make grammar suggestions to the subcommittee's proposal, the member should email David Ayraud (dayraud@larimer.org) with those suggestions.

The committee discussed the following proposed rules and agreed to the following:

1. Case Management for Adjudicatory Trials Rule
 - a. In subsection (e) use "jury trial" not "adjudicatory trial" and as a general usage note use "adjudicatory hearing" and "jury trial" when appropriate but not "adjudicatory trial"
 - b. In (e)(a)(iii) & (v) strike the reference to 8 copies and have both sections say "a sufficient number of copies"
 - c. Change (e)(b) to say "The court may" instead of "the court will"
 - d. Change (f) to be titled "Pre-trial Stipulations" instead of just "Stipulations"
 - e. Change (g) to say case management "rule" instead of "order"
 - f. Strike (h) entirely (the committee agreed that, in proposing state-wide rules, there would be no more need for local rules)
2. Adjudicatory Hearing Rule
 - a. With regard to subsection (b), "Right to Participate," there was discussion about roles played by a GAL for a respondent, a counsel for a child, an intervenor, and a special respondent and their ability to participate in an adjudicatory hearing. Similar discussion was held last meeting when discussing the discovery rules and the rights and duties of these participants in discovery. The committee felt that problems drafting rules touching on these participants will continue until the committee can come to agreement on the scope these participants have within dependency and neglect cases and how the rules should handle these participants. The chair will explore the

issue before the next meeting and will attempt to develop a way for the committee to resolve this issue, so that all subcommittees will be on the same page in drafting rules involving these participants.

- b. Subsection (c), (g), and (h) should refer to the burden of proof as “preponderance” but should then say “notwithstanding the provisions of” or in some manner refer to the ICWA rule (where the burden would be clear and convincing)
 - c. In subsection (d) change “facts admitted by a parent” to “Admissions by a parent”
 - d. There are several statutory references in the proposed rule. The committee discussed whether there was a preference for statutory references or not. No particular consensus was reached about whether it was a generally good idea to use them or a generally bad idea to use them. The committee agreed that, for now, the individual subcommittees should look at the individual rule and think about whether a statutory reference makes sense in drafting that particular rule.
3. Parties and Joinder Rule
 - a. The committee continued to struggle reaching conclusions on the roles of GALs for parents, counsel for a child, intervenors, and special respondents in the context of this rule. The committee tends to agree that a GAL for a parent is not a party.
 4. Admissions Rule
 - a. A time period is not required in this rule
 5. Consolidation; Separate Trials Rule
 - a. The subcommittee indicated that this rule posed difficulties and there was disagreement about how to proceed (thus, the two alternatives for subsection (c)). The subcommittee also thought that this rule might be impacted by People in Interest of S.M-L., 2016 COA 173 (cert has been sought) and that the state of the law in this area may not be settled. The committee agreed that consolidation/severance is a tricky area: goals of efficiency, economy, and consistent results are important, but, in D&N cases, describing severance is difficult because the parties are tied together--especially with an injurious environment allegation. See People in Interest of J.G., 2016 CO 39.

The committee did not discuss the proposed rules involving: Continued (Deferred) Adjudications; Default; Evidence; Informal Adjustment; Intervention; Trial by Jury & Trial by Jury (alternative draft); Responsive Pleadings and Motions & (Alternative subsection (e)); Summary

Judgment; Time; Continuances. These proposed rules will be taken up at the next meeting.

IV. Future Meeting: Friday, March 24 @ 9:30 AM-Supreme Court Conference Room

Judge Ashby thanked the subcommittee chair and subcommittee guests for their presentation and the committee members for their active engagement. The Committee adjourned at 11:56 a.m.

*Respectfully Submitted,
J.J. Wallace*

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of March 24, 2017 Meeting**

The Rules of Juvenile Procedure Committee was called to order by Judge Ashby at 9:36 a.m., in the supreme court conference room on the fourth floor of the Ralph L. Carr 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	
Kelly Boe		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	
Karen Stall		X
John Thirkell		X
Chief Judge Jeffrey Wilson	X	
Non-voting Participants	X	
Justice Allison Eid, Liaison		X
Terri Morrison		X
J.J. Wallace	X	

Attachments & Handouts

(1) Adjudication Subcommittee Proposal (updated)

I. Call to Order

- A. Approval of 1/20/17 meeting minutes:** After a motion was made by Mag. Simonet to approve the minutes and seconded by Mag. Spangler, the committee approved the last meeting's minutes unanimously.

II. Chair's Report

- A. Welcome New Members:** Sheri Danz, Wendy Lewis, & Trent Palmer. Cynthia Cavo also attended the meeting as the new representative of CASA in Colorado.
- B. Next meeting:** May 12, 2017 @ 9:30 AM Supreme Court Conference Room, 4th floor
- C.** Judge Ashby related that research assistance is available to the committee and subcommittees with particularly difficult issues. Committee members may ask assistance researching legal issues and/or gathering information and data. Sample memos from other committees were provided as links on the agenda. If a committee member wants to request a memo on a particular topic, email the request to J.J. Wallace, jennifer.wallace@judicial.state.co.us, and cc Judge Ashby (karen.ashby@judicial.state.co.us).

III. Old Business

A. Draft Rules-Adjudication Proposal-David Ayraud & Sheri Danz

David Ayraud related that he did not receive any emails about typographical errors or grammar mistakes. Please email him if you've spotted any: dayraud@larimer.org. He said he did receive one comment about 4.2.1(d)-witness statements-suggesting that a witness list include a detailed statement about the content of each witness's testimony. He said that the suggestion was in response to RPC feedback that they sometimes do not receive information about what a witness will say until they hear the testimony at trial. He also indicated that county attorneys were concerned that the requirement might lead to exclusion of testimony that did not specifically conform to the statement.

1. 4.2.5 Continued (Deferred) Adjudications;

- David Ayraud noted that the subsections are mislettered. It starts with (i) and ends with (o), but should be subsection (a) through (g).
- The subcommittee members indicated that subsection (k) was drafted to account for a split process for continued (deferred) adjudications. Some jurisdictions take the admission and then later decide the terms and conditions of the continued (deferred) adjudication (split process). Other jurisdictions only take the admission and the terms and conditions at the same time (unified process). The pros and cons of each process were discussed and committee members from each kind of jurisdiction felt strongly about their process. For now, the committee decided to leave the rule to allow for either a split process or a unified process and will look for to see if there is case law requiring any particular process.
- In subsection (m), the committee had a strong reaction to the second sentence of (a) (beginning "The court should also consider the ongoing . . ."), which the subcommittee added pursuant to People in Interest of N.G., 2012 COA 131, ¶ 27. Prof. Robinson noted that, in N.G., it was

only the parent that could present new evidence, not the county and the proposed language would allow the county to present new evidence (in effect amending the petition without having to amend the petition). The committee agreed that a revocation has two elements: (1) noncompliance with the terms and conditions by the parent and (2) the child is still dependent and neglected. A suggestion was made to substitute something like, “The court should also consider all other relevant factors in determining whether to enter the adjudication” to provide a catch all beyond just the parent’s noncompliance. The committee also suggested adding language making it a requirement that the court provide a written order.

- The committee felt that subsection (n) (waiver of procedural rights) might be appropriate as a general rule applicable to all stages of the D&N, not just applicable to adjudications.

2. 4.2.6 Default;

- The committee decided that a rule on default may not be needed. No committee member could recall ever using default (as outlined in C.R.C.P. 55 and 121 § 1-14) in a D&N case. There may also be problems with using default (C.R.C.P. 4 requires the summons to provide notice that default may occur if a defendant does not respond; § 19-3-503 (content of summons) does not require similar language and respondents in D&N cases are not required to file responses). Although committee members acknowledged that sometimes participants use the word “default” to describe adjudication for a non-appearing party, the process used appears to be on the merits rather than a procedural default as contemplated by the C.R.C.P. Sheri will check with GALs, Ruchi will check with RPC, David will check with county attorneys, and J.J. will check with the courts to see if any jurisdiction uses a true default process. The committee anticipates substituting a rule for “Adjudication for Nonappearing Parties” instead of default.

3. 4.2.7 Evidence;

- The subcommittee attempted to catalog evidentiary considerations for D&N cases (the proposed rule would appear to cover temporary hearings, review hearings, etc.). The committee directed the subcommittee to just focus on evidentiary considerations for adjudications. For timelines, CJD 96-08(3)(c) notes that reports from the department must be filed and served at least 5 days in advance of hearings. See https://www.courts.state.co.us/Courts/Supreme_Court/Directives/96-08.pdf. Mr. Palmer noted that, as RPC, he feels strongly that report writers should appear, give live testimony, and be cross-examined at an adjudication hearing.

4. 4.2.8 Informal Adjustment;

- The committee recommended the first two sentences be amended as follows:
On the basis of a preliminary investigation conducted pursuant to section 19-3-501(1), Colorado Revised Statutes, a court may make whatever informal adjustment is practicable in accordance with this rule [or statute](#). An informal adjustment may be made before a petition is filed or after filing ~~if the petition~~ at which time the petition must be dismissed.

5. 4.2.9 Intervention;

- To match usage in other rules, change “application” and “applicant” to “motion” and “movant” throughout this proposed rule.
- Section 19-3-507(5)(a), C.R.S. (2016) states: Parents, grandparents, relatives, or foster parents who have the child in their care for more than three months who have information or knowledge concerning the care and protection of the child may intervene as a matter of right following adjudication with or without counsel. Regarding (a)(1), there was a discussion as to whether the phrase “who have information or knowledge concerning the care and protection of the child” modifies just foster parents or if it modifies parents, grandparents, and relatives as well. The committee decided this was an unsettled question of law and decided to leave the proposal as is (for now).
- In 4.2.9(c) change “statute” at the end of the second sentence to “legal authority.”

6. 4.2.10 Trial by Jury;

- In subsection (b), the first sentence should indicate an advisement of the right to a jury trial is required before a jury demand can be deemed waived.
- Also in subsection (b), “without good cause” should be added to (3) and (4)-situations where a respondent fails to appear.
- In subsection (b)(3), the committee decided that a waiver of a jury trial for failure to appear at a pre-trial conference could only occur if: (1) the failure to appear is without good cause; (2) the respondent was ordered to appear at the pre-trial conference; and (3) the respondent had been advised that a failure to appear at the pre-trial conference would result in a waiver of the jury trial. Some committee members opposed inclusion of a mandatory pre-trial conference as a circumstance for waiving a jury trial, but committee members from less populated jurisdictions indicated that it was hard to get jurors to respond to their summonses and that personal appearance at a pre-trial conference provided certainty that the jury trial was moving forward and that jurors were necessary.
- Also, the committee suggests making (b)(3) permissive (the court may deem the jury demand waived if . . .).

7. 4.2.11 Responsive Pleadings and Motions (& Alternative subsection (e));

- Discussion deferred until the next meeting

8. **4.2.13 Summary Judgment;**
 - Discussion deferred until next meeting
9. **4.2.14 Time; Continuances.**
 - Discussion deferred until next meeting

As the discussion progressed, the committee noted that several of the proposed rules touch on areas where there is no precise legal authority and/or there are unresolved legal questions about the area. The committee discussed its role in proposing rules in these undecided areas. The committee also discussed whether to incorporate case law into the rules. The Chair noted that the purpose of the rules has been evolving as the committee has discussed the different subcommittee's proposals. Right now, Judge Ashby provided four guidelines for the subcommittees to consider in drafting proposed rules:

- (1) The rules should provide steps and timelines;
- (2) The rules should do more than just recite the statutory language-they should add something;
- (3) Colorado Supreme Court precedent should be considered settled law; the court of appeals (COA) precedent is less so and there's more risk in incorporating COA case law into a rule; and
- (4) The rules are striving to achieve state-wide consistency.

IV. New Business

- A. Judge Miller (chair of the discovery subcommittee) indicated that round two of the proposed discovery rules will be ready for discussion by the next committee meeting. The post-termination rules are also ready.

Judge Ashby thanked the committee members for their active engagement. The Committee adjourned at 12:03 p.m.

Respectfully Submitted,
J.J. Wallace

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of May 12, 2017 Meeting**

The Rules of Juvenile Procedure Committee was called to order by Judge Ashby at 9:34 a.m. in the supreme court conference room on the fourth floor of the Ralph L. Carr 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
Kelly Boe		X
Cynthia Cavo	X	
Jennifer Conn		X
Sheri Danz	X	
Traci Engdol-Fruhworth	X	
Judge David Furman		X
Ruchi Kapoor	X	
Andi Truett (for 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	
Karen Stall		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) Last three rules of Adjudication Subcommittee Proposal
- (2) Additional rule on non-appearing respondents
- (3) Post-termination rule

I. Call to Order

- A. The 3/24/17 meeting minutes were approved unanimously.

II. Chair's Report

- A. **Next meeting:** July 28, 2017 @ 9:30 AM Supreme Court Conference Room, 4th floor. Judge Ashby noted that Fridays are jeans day at the court of appeals and invited committee members to wear jeans to the next meeting.

III. Old Business

A. Draft Rules-Adjudication Proposal-David Ayraud & Sheri Danz

1. 4.2.11 Responsive Pleadings and Motions (& Alternative subsection (e));
 - a. The committee discussed pros/cons of the alternate version of the rule and concluded that inclusion of the longer version reinforces and emphasizes the requirements of CRCP 121 § 1-15 and are worth noting in the hopes that practitioners will follow it.
 - b. Motions is a rule that might be generally applicable to all areas: pre-adjudication is talking about a motions rule too.
 - c. The committee discussed (e)(3). The committee felt this language was helpful to remind practitioners to include legal authority and felt comfortable leaving discretion with the trial court ("may") to deny a motion without legal authority feeling that trial courts would not punish pro se parties that did not include legal authority.
 - d. Various edits to the language and structure of the rule were made (see version of the rules provided for the 8/4/17 meeting)
2. 4.2.13 Summary Judgment;
 - a. The committee agreed that three parties could move for summary judgment: petitioner, respondent, GAL. It was determined that the rule did not appear to need to identify these parties.
 - b. The committee discussed the difficulties of departing from C.R.C.P. 56.
 - c. The committee did not see any harm in leaving partial summary judgment in the rule (but acknowledged that the applications might be limited given the nature of adjudications).
 - d. The committee looked at the most recent supreme court case on summary judgment: *People In Interest of S.N. v. S.N.*, 2014 CO 64.
 - e. Some edits to the language of the rule (especially related to time for filing) were made (see version of the rules provided for the 8/4/17 meeting).
3. 4.2.14 Time; Continuances
4. 4.2.X Adjudication On Non-Appearing or Non-Defending Respondent (deferred until next meeting)

General Discussion:

- The committee discussed referring to existing civil rules or forming self-contained rules. The committee agreed to keep the rules self-contained for now to put the emphasis on the needs of juvenile (and to keep focus on where those needs might be different from other civil cases). The committee acknowledged difficulties with this approach. Once the discussion began on the proposed summary judgment rule, the committee recognized

relying on case law from C.R.C.P. 56 summary judgment would be helpful and changing the rule for juvenile may open the door to departing from that settled law.

- The rules generally applicable to all stages of a D&N case are becoming more clear: motions; evidence; time computation; summary judgment; CMOs. It would be helpful if the subcommittees shared their work in these areas. If your subcommittee is working on a rule that you think may be generally applicable to other stages of a D&N, please email your proposed rule (or any updates) to J.J. (jennifer.wallace@judicial.state.co.us) and she will email the rule to all the subcommittee chairs.
- For the next meeting, the committee anticipates much discussion about rule on adjudications for non-appearing parties. Committee members are invited to look at other states' law on this issue to help guide the discussion.

IV. New Business

A. Post-Termination Rule

- a. Discussion deferred until next meeting

Judge Ashby thanked the committee members for their active engagement. The Committee adjourned at 12:03 p.m.

*Respectfully Submitted,
J.J. Wallace*

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of August 4, 2017 Meeting**

The Rules of Juvenile Procedure Committee was called to order by Judge Ashby at 9:40 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	
Kelly Boe		X
Cynthia Cavo	X	
Ashley Chase	X	
Jennifer Conn		X
Linda Weirnerman for Sheri Danz	X	
Traci Engdol-Fruhworth		X
Judge David Furman	X	
Ruchi Kapoor	X	
Andi Truett for 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) Adjudication Subcommittee Proposal (updated)
- (2) Post-term Rule

I. Call to Order

II. Chair's Report

A. **Next meeting:** Sept. 22, 2017 @ 9:30 AM Supreme Court Conference Room, 4th floor

III. Old Business

1. Rule draft: Adjudication 4.2.6 Default OR Adjudication On Non-Appearing or Non-Defending Respondent (2 versions of the rule found at pages 10-12 of the Full Set of Adjudication Rules)

David Ayraud opened by explaining the highlights of the two rules. He indicated that these rules generated the most discussion out of all the rules. The subcommittee surveyed various jurisdictions to get an idea of how they handled non-appearing parties. He said 40% of jurisdictions use default for non-appearing parties; 40% have a short hearing with sworn testimony; and 20% used a variety of other methods. He also said that the subcommittee did not develop a clear preference between the two rules.

The committee began with the default rule:

- If default will be allowed by rule, the rules need summons language advising and giving respondents notice that default can be entered against them. Because the rule currently does not require responsive pleadings, see C.R.J.P. 4.1(a), summons language may need to advise respondents who “fail to defend” that default may be entered against them. The summons language should account for two scenarios: (a) non-appearing respondents who appear once or twice and then leave; and (2) non-appearing respondents who never appear.
- The rule sets out a two-step process (similar to C.R.C.P. 55): (1) entering default against the non-defending party; and (2) entering the adjudication.
- RPC likes that the rule provides a process to set aside a default. A process to set aside a default provides a way to cure notice problems. RPC generally prefers this rule to the alternative because of this one process. There was a discussion of trying to do a hybrid rule using the non-appearing respondent rule and then adding an element to set it aside, but David Ayraud thought the hybrid would only be possible for incompetent or minor respondents. The committee also discussed taking setting aside default out of this rule and drafting a separate, independent rule with a process for setting aside an adjudication (not just an adjudication entered by default).
- GALs expressed concern that this rule (and the ability to set aside an adjudication generally), may delay permanency.
- Smaller jurisdictions like the default rule because it's hard to marshal resources for even a short evidentiary hearing for the large number of non-appearing respondents.
- The draft rule says that the affidavit for adjudication by default may be executed by the attorney for the petitioner. This is different from C.R.C.P. 121 § 1-14(1)(d), which requires a person with knowledge of the damages and the basis therefore and forbids the attorney from doing the affidavit. The subcommittee drafted the rule to allow for attorney affidavit because of smaller jurisdictions. A suggestion was made to add “with the permission of the court” at the end of the sentence to allow the court to decide if the attorney affidavit is sufficient or if a caseworker or other person with knowledge is required.

- If the committee goes with the default rule, the pre-adjudication subcommittee should think about the following issues: (1) appropriate advisement that default is possible; (2) right to counsel; (3) notice issues to ensure actual notice (for example, child support units might have a good address for a parent from a IV-D order, but the child welfare unit might say that they can't find the parent).

The committee then turned to the non-appearing respondent rule:

- This rule calls for a short evidentiary hearing (sometimes called “an offer of proof,” but really it is an evidentiary hearing).
- This rule allows for cross-examination (unlike default)-it's an opportunity to test the evidence.
- The committee liked that this kind of adjudication was based on evidence (not a failure to appear or defend), so it would be harder to undo later, which is good for children's permanency and consistent with the Children's Code.
- But even under this rule, lack of proper notice might justify setting aside the adjudication (the committee emphasized again how important providing notice is in keeping the case on track). Thus, a separate rule on setting aside an adjudication could be helpful. A committee member pointed out that C.R.C.P. 60(b), which is currently applicable to D&N cases, already provides a mechanism to set aside an adjudication. He also noted that magistrates, who frequently hear D&N cases, cannot rule on C.R.C.P. 60(b) motions. The subcommittee should think about complexities added by the C.R.M., § 19-1-108, and case law on magistrates. Research assistance through the library is available if it is needed in exploring this issue.
- RPC raised concerns about this rule's application when there is a criminal case going on.
- The committee agreed that there is a need for a streamlined process of some sort.
- If the committee goes with the non-appearing respondent rule, the pre-adjudication subcommittee should think about whether there should be appointed counsel in every case (even when no one appears), which might provide a safety valve.
- Judge Ashby encouraged committee members to talk to their colleagues about the two proposed rules to get a sense if there is a preference.

2. Post-Termination

Judge Ashby, chair of the post-termination subcommittee, introduced the draft and spoke briefly about the subcommittee's process. The subcommittee did not draft any rules involving reinstatement of parental rights because (1) it does not appear that this had happened yet in the state; and (2) the statute seems to provide sufficient procedures. The main goal of the proposed rule was to put meat on 19-3-606. OCR was contacted about subsection (d) to comport with its practices.

- There was a discussion about whether subsection (g) should require a permanency review more frequently than every 6 months.
- There was a discussion about subsection (f)(5). The committee believes that courts should be encouraged to not just think about biological sibling relationships, but to maintain other relationships that are important to the child. For example, a relationship where a child has a psychological but not biological tie. The suggestion was made to offer a more expansive definition or explanation in a comment focusing on the

children's perspective of who is important to them and the relationships that they wish to maintain.

IV. New Business

A. Check in with subcommittees:

1. Discovery will be ready for the next meeting
2. Permanency will also be ready soon. The subcommittee has focused on permanency planning and has not addressed any rules for placement hearings under section 19-3-702(9) or the permanent home statute of 19-3-703. Judge Meinster will be contacting people about whether rules around placement hearings would be useful.

The minutes for the 5/12/17 meeting were unanimously approved.

Judge Ashby thanked the committee members for their active engagement. The Committee adjourned at 11:47 p.m.

*Respectfully Submitted,
J.J. Wallace*

**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 Intervenor, 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*

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of December 8, 2017 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee was called to order by Judge Ashby 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
Linda Weinerman for Sheri Danz	X	
Traci Engdol-Fruhworth	X	
Judge David Furman		X
Ruchi Kapoor	X	
Andi Truett for 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	
Pam Wakefield	X	
Chief Judge Jeffrey Wilson	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Attachments & Handouts

(1) Minutes from 9/22/17 Meeting

(2) Shorter Version of the Rules

a. Standard CMO

- b. Section IV of the CMO
 - c. Release Form
- (3) Longer Version of the Rules

II. Chair's Report

The chair introduced the new Liaison Justice: Justice Richard Gabriel, and a new committee member: Pam Wakefield.

The chair introduced Judge Woods, presiding judge of the Denver Juvenile Court, and Katie Smith with the Denver City Attorney's Office, Human Services Section. They have each expressed interest in discovery/disclosure rules as stakeholders and were interested in observing the committee's meeting.

The September 22, 2017 minutes were approved unanimously.

III. Old (& New) Business

Judge Miller, co-chair of the discovery subcommittee, introduced the attending subcommittee members: Cara Nord, Heather Beattie, Amy Markwell, Jordan Lewis, Sharon Plettner, Joe Pickard, Michael Valentine, and Rebecca Tyree.

Judge Miller made an opening presentation explaining the evolution of the subcommittee's thinking. The subcommittee believes that discovery/disclosure is currently been done, but in an ad hoc manner. The subcommittee reached consensus that:

- 1) We need state-wide discovery rules
- 2) We need to be sensitive to privilege/confidentiality
- 3) We need mandatory disclosures
- 4) We need active case management by the bench
- 5) We need to be aware of the various rights and interests

Judge Miller also explained the thinking behind the new shorter version of the rules: the longer version of the rules promotes an adverse visceral reaction; the shorter version is more consistent with C.R.C.P. 16.2 and with other states' rules. However, with the shorter rules, you lose specificity and there may be a tendency, when issues arise, to look for specificity in the C.R.C.P., which are adopted for civil cases generally and may not meet the needs of juvenile cases.

Co-chair John Thirkell added that community feedback and buy-in for any discovery/disclosure requirements will be essential and he invited committee members to continue to spread the word and request feedback.

The committee's consensus was that shorter rules are preferable. The committee made the following recommendations to the proposed shorter version of the rules:

Subsection (a):

- Add language indicating that it's anticipated that informal discovery and information trading should still be happening and these rules are intended to supplement those practices.
- Emphasize that D&N cases must move quickly and note that these rules are not intended to expand statutory timeframes.
- Add language similar to C.R.J.P. 1.

Subsection (b):

- Add a timeframe for adopting a CMO to promote early, active case management.
- Add that a CMO should identify whether it's an EPP or ICWA case, UCCJEA issues, paternity issues, and any other special circumstance that may impact the case.
- Note that, as the case evolves and the posture changes, the court may need to adopt additional case management orders (such as when there's an APR hearing set).
- The committee also noted that the pre-adjudication subcommittee might be interested in thinking about CMOs and the issues that relate to that timeframe in a case.

Subsection (c):

- The committee thought subsection (c) calling for a case management hearing could be deleted in favor requiring a stipulated case management order in (b) and if the parties cannot reach agreement, the court can set a hearing under (b) as part of its active case management responsibilities.

Subsection (d):

- Add that GALs are not required to produce discovery unless ordered by the court for good cause.
- After subsection (d) the committee recommended adding another subsection stating "Upon request, the court may authorize other case participants to engage in disclosures and discovery"; this idea is separately noted in several places, so making it its own lettered subsection seems more efficient.

Subsection (e):

- Add a scope requirement that the disclosure must relate to the allegations giving rise to the case or are relevant to a contested issue before the court.
- Add "visitation summaries or reports" to the list in (2)(A)(IV)
- In (2)(A)(V) add "as provided by state or federal law or . . ." after "information"
- Take out (2)(C) (special participants language) because we added it above
- Add *any information* about Native American heritage to (2)(B)(II).
- Title (3) "*Evidence for a Contested Trial or Hearing*"
- Throughout (3) identify witnesses that *may or will* be called.
- In (3)(a) add a scope requirement such as "related to their testimony or the case."

- In (3)(b) add “a statement of the expert’s qualifications” along with CV and résumé.
- The subcommittee stated that a *summary* of the expert’s testimony is required and noted that this is an intentional departure from the C.R.C.P.

Subsection (f):

- In (1) or as a comment to the rule add language which says that discovery might not be needed in every case and that the rules are not meant to encourage unnecessary discovery and that the court has the discretion to limit discovery.
- In (2) state that written motions are not required unless the court says so (the intent is to have people informally resolve the issue or to call the court to resolve the issue, not to increase motions practice and add delay by requiring a written motion and response)
- In (3) add a presumption that it’s not in the child’s best interest to be deposed unless good cause overcomes the presumption
- In (4), begin the sentence with “Throughout a case”
- In (5), (6), & (7) take out references to pattern admissions, interrogatories, and requests for production

Subsection (g):

- The committee discussed striking (g) acknowledging the heavy burden of having a continuing duty to update disclosures and discovery. The facts in D&N cases are always changing and evolving. Instead of a continuing duty, the rule could provide mechanisms to accommodate new information as the case evolves such as requiring disclosures of additional evidence before each new kind of hearing or mechanisms allowing additional requests for discovery.

Briefly, Judge Miller also mentioned that the subcommittee discussed pattern discovery. He personally believes it would be too hard to come up with pattern discovery because every case is different and has its own issues. The committee tended to agree that pattern discovery would be very difficult to formulate.

Judge Ashby thanked the committee members for their active engagement. She also thanked Judge Miller and his hard-working subcommittee members. The Committee adjourned.

Respectfully Submitted,
J.J. Wallace

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of February 2, 2018 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order 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-Fruhwirth		X
Judge David Furman	X	
Ruchi Kapoor	X	
Andi Truett for 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	
Pam Wakefield	X	
Chief Judge Jeffrey Wilson		X
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Attachments & Handouts

- (1) Minutes from 12/8/17 Meeting
- (2) Updated Short Version of the Rules
 - a. Proposed CMO (with Section IV)

- b. Proposed Release Form
- (3) Proposed Permanency Planning Rule
 - a. Proposed Notice

II. Chair's Report

The minutes were approved unanimously after amending them to reflect Pam Wakefield's attendance at the last meeting.

The chair, liaison justice, and chair of the subcommittee that will be presenting next, are not available for the March 16th meeting. The meeting on March 16th is cancelled and reset to April 6, 2018 at 9:00 AM in the Supreme Court Conference Room.

III. Old Business

A. Updated Version of the Short Version of the Disclosure/Discovery Rules:

John Thirkell, co-chair of the discovery subcommittee, and Cara Nord, a subcommittee member, presented the updated version of the shorter rules and asked for the committee's feedback.

The committee offered the following feedback:

- add language to subsection (a) to recognize § 19-3-203 (requires certain information to be shared with a GAL) and § 19-1-210 (same for CASAs);
- subsection (b) should make clear that the parties must stipulate to a case management order or the court should hold a case management conference;
- subsection (d) was modified to cover other case participants entirely and authorizes the court to have them engage in or be subject to discovery and disclosures. This allowed the committee to remove the clunky phrase "or other person approved by the court in accordance with law" from all of the discovery mechanisms;
- the committee decided to break out disclosures into two categories: (1) "mandatory disclosures," which are ICWA information and UCCJEA information and are set out in a new subsection and (2) "disclosures upon written request," which are those listed in subsection (e);
- a county attorney expressed concern over law enforcement reports in the petitioner's possession being a disclosure upon written request. His jurisdiction has a memorandum of understanding with local law enforcement that the county attorney's office can be provided with law enforcement reports but only on the condition that the county attorney not provide the reports to others. In response, the committee added language to the rule allowing the petitioner to provide written notice of the items not disclosed and the reason that it was not disclosed and then leaving to the court the resolution of any dispute about items not disclosed;

- ICWA information, previously, a respondent’s “disclosures upon written request,” was made a mandatory disclosure and the committee decided to remove the child’s records from the respondent’s disclosure obligations. It was decided that if the child’s records were needed, the discovery mechanisms would be a better way to address those issues. It was also thought that the discovery mechanisms would be a better way for information about the parent or other respondent to be sought by the petitioner or GAL;
- the committee considered again whether depositions should be authorized under the rules. The representative from ORPC indicated that her office has a process in place to approve deposition requests. She acknowledged that they are expensive but felt they may be necessary in some cases. Other committee members also had experience with depositions in D&N cases, but the consensus was that they were very rare. Another committee member also shared that, in her experience, depositions have been useful for unavailable witnesses. The committee decided to leave depositions (and other discovery mechanisms) in the rule but did amend the language of the oral deposition rule to say “up to” four persons.

The committee feels satisfied with the shorter version of the disclosure/discovery rules.

IV. New Business

- A. Permanency Planning-due to time, this item is tabled until the next meeting.

The Committee adjourned at 12:07 PM.

*Respectfully Submitted,
J.J. Wallace*

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of April 6, 2018 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 AM 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
Jenny Bender		X
Jennifer Conn	X	
Sheri Danz	X	
Traci Engdol-Fruhworth	X	
Judge David Furman	X	
Ruchi Kapoor	X	
Andi Truett for 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	
Pam Wakefield	X	
Chief Judge Jeffrey Wilson		X
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Attachments & Handouts

- (1) Minutes from 2/2/18 Meeting
- (2) Proposed Permanency Planning Rule
 - a. Proposed Notice

(3) Letter from RPC Re: Ineffective Assistance of Counsel Claims

II. Chair's Report

- A. The minutes were approved unanimously after amending them to reflect Pam Wakefield's attendance at the last meeting.

III. Old Business

- A. Permanency Planning Proposal

- (1) Judge Meinster, co-chair of the permanency subcommittee thanked the subcommittee, co-chair Colene Robinson, Laura Locke, Jennifer Mullenbach, and J.J. Wallace.

- (2) Paragraph (a):

Judge Meinster explained that the subcommittee began by debating whether the permanency hearing statute envisions a right to an evidentiary hearing. In practice it seems like permanency "hearings" are non-adversarial and perfunctory. But, there are occasions where the permanency plan is challenged through argument or a permanency hearing is contested and called something else (for example, a return home hearing). The subcommittee settled on permanency hearings being a right with the understanding that a contested hearing may not be held on every occasion. Judge Ashby asked committee members about their experiences. Committee members seemed to agree that, if contested, permanency hearings usually involve only argument, or they are combined with another kind of hearing if there is evidence (for example, a combined termination/permanency hearing). One committee member liked treating the hearing as a right because it would enforce federal regulations, which require a record on placement preferences. The committee also suggested using "placed out of the home" instead of "out-of-home placement" to conform to the statute.

The second big issue for the subcommittee was whether to address time frames. The subcommittee had difficulty summarizing generally-applicable time frames and concluded that permanency scheduling is case-by-case, so the subcommittee decided not to reference timeframes in the rule. The subcommittee also thought that addressing permanency was a priority in most jurisdictions and did not think that adhering to time frames was a problem. The draft uses the dispositional hearing as a prompt to schedule the permanency hearing. The committee noted that when there is a deferred adjudication or informal adjustment, there is no dispositional hearing and might be worth including in a comment. The committee thought inserting "timely" in the first sentence would be a good prompt for parties to figure out the permanency schedule in unique situations.

The committee also agreed to use “any party” instead of “any interested party” to conform with usage in other rules.

The committee also suggested that a case may have several permanency hearings, so suggested use of the plural.

After revision by the committee, paragraph (a) reads:

Hearing. The Court must hold timely permanency hearings for any child who is placed out of the home. Scheduling of the initial permanency hearing should occur at the dispositional hearing. The hearing may be scheduled by the Court or upon motion of any party.

Comment

In cases where there is a deferred adjudication or an informal adjustment, scheduling the initial permanency hearing is not triggered by the dispositional hearing. In such cases, the initial permanency hearing should be scheduled within three months of the deferred adjudication or the informal adjustment.

(3) Paragraph (b):

On this provision, Judge Meinster recounted that the subcommittee tried to draft the notice provision to account for § 19-3-702(2)’s language, which requires that “the court shall promptly issue a notice.” But the draft rule also tries to account for the wide-spread practice that the department provides and sends the notice because the department is more likely to have the address for the child’s placement. The committee agreed and believed the rule should be flexible. The committee revised the draft language to reflect that it’s the court’s duty to ensure that notice is being sent, but accounts for the possibility that the department may be the party sending the notice and refers to the specific subsection in the statute which controls to whom notice must be sent. Committee members also moved the language about GALs ensuring that children receive notice of the permanency to a comment and favored use of “developmentally appropriate” over “age-appropriate.”

After revision by the committee, paragraph (b) reads:

Notice. For any permanency hearing, including modification under paragraph (d) and review under paragraph (e), the court must ensure that notice is provided pursuant to section 19-3-702(2). Placement providers must provide notice to the child of any upcoming hearings. The permanency hearing notice must be in substantial compliance with Form __ of the Appendix of Chapter 28.

Comment

The guardian ad litem must ensure the child receives developmentally appropriate notice of the permanency hearing.

(4) Notice Form:

Judge Meinster said the subcommittee drafted the form notice, but wanted input from the committee in two areas: (i) what should the notice say about what happens at the permanency hearing (the subcommittee provided a long version and a short version) and (ii) what are “the constitutional and legal rights of the child and the child’s parents or guardian”?

- (i) On the first issue, the committee did not like the long version of section (I) of the notice. The committee felt that by parroting the statute, lay parties would have a difficult time understanding the meaning.

The committee also did not think that the short version of section (I) of the notice provided an understanding of what would take place at the permanency hearing. Committee members felt that most parents would not understand the meaning of “a permanency plan.” On this issue, many committee members felt that it was largely counsel’s role to explain the permanency hearing to their clients, and, as a result, the notice may not need to be too detailed about the hearing. The committee suggested adding a “catch-all” to the short version of section (I) such as: “At the permanency hearing, the court will set a permanency plan for the child and a target date for achieving the plan and may take up any other matter contemplated by [section 19-3-702(4)] or [the whole statute].”

- (ii) On the second issue, Sheri Danz volunteered that she has recently been working on updating the GRID (Guided Reference in Dependency) with the help of ORPC. She will provide the committee with the GRID’s list of children’s rights and respondents’ rights and, at the next meeting, the committee can decide which ones belong on the notice. Sheri will also provide the GRID section on the permanency hearing for the next meeting to assist in examining the rest of the rule.

(5) Paragraph (c):

The committee did not discuss paragraph (c), but, in discussing the form notice’s language about receiving the proposed permanency plan before the hearing, the committee thought that the rule itself should highlight that requirement. See § 19-3-702(2). The committee felt that paragraph (c) was the best place to make the reference.

- (6) After finishing paragraph (b) (but not the form notice), the committee tabled further discussion until the next meeting and moved on to new business.

IV. New Business

A. Letter from ORPC Re: Ineffective Assistance of Counsel Claims

- (1) After a brief discussion, the committee decided to further explore whether a procedural mechanism for raising ineffective assistance of counsel claims should be

included in the rules. Ruchi Kapoor has agreed to head up the exploratory effort. She's done a lot of research into what other states do and what options are out there. Ruchi's hoping to get other perspectives on the pros and cons of the different approaches. If you or someone you know could help her look at the issue from all angles, please email her to join her group: RKapoor@coloradoorpc.org.

- (2) One committee member wondered how often these kinds of claims were made, and how often they were successful at securing a remand. The member was concerned that by providing a mechanism, we may be creating a problem and causing delay rather than solving a problem and minimizing delay. J.J. Wallace will research frequency of ineffective assistance of counsel claims being raised in the court of appeals and the number of cases that were remanded for further proceedings and will provide that information to Ruchi.

The Committee adjourned at 12:13 PM.

Respectfully Submitted,
J.J. Wallace

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of May 4th, 2018 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 AM 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
Jenny Bender		X
Jennifer Conn	X	
Sheri Danz	X	
Traci Engdol-Fruhworth	X	
Judge David Furman		X
Ruchi Kapoor	X	
Andi Truett for 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
Pam Wakefield	X	
Chief Judge Jeffrey Wilson	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Attachments & Handouts

- (1) Minutes from 4/6/18 Meeting
- (2) Proposed Permanency Planning Rule & Notice
- (3) Draft GRID updates from Sheri Danz on children's rights; parents' rights; and permanency hearing

II. Chair's Report

A. The minutes were approved without amendment or objection.

III. Old Business

A. Permanency Planning Proposal

(1) Form notice: co-chair Colene Robinson thanked Sheri Danz for sending the GRID updates on legal rights, which helped identify many rights.

- a) In reviewing those lists, she believed that the child's right to have a person of his or her choice at the hearing should be included on the form notice and the committee agreed.
- b) Prof. Robinson also asked for feedback on whether the language of § 19-1-107(4) (Re the child's right to cross-examination concerning a written report). The consensus of the committee was not to include that on the notice. The committee did not want to broaden rights and, in light of the statute's language focusing on "determining the proper disposition of a child," the committee felt it best not to identify that as right on the notice of the permanency hearing.
- c) In discussing the cross-examination right, the committee held a larger discussion on whether to be very specific about rights or to be general. Committee members were divided. Some committee members felt specifying rights was a substantive action and not appropriate for a procedural rule. Other members felt that when advising people, you must be specific, and therefore favored identifying specific rights. Given the division among the committee, the committee decided to send the notice back to the subcommittee.
- d) The committee also made a structural suggestion to move the child's rights to the bottom.
- e) The committee also suggested taking out the reference to a continuance.

(2) Paragraph (c):

- a) The committee agreed to remove the reference to the burden of persuasion in the paragraph. The committee felt that the permanency statute puts the burden on the court to drive the decision-making for the permanency plan. It was pointed out that adopting a permanency plan is rarely an issue contested by the parties: if a respondent contests, usually the issue is resolved by adding concurrent planning. If the court is uncomfortable with the petitioner's recommended plan of return home, the court can show cause the petitioner. This illustrates that it is the court who is ultimately responsible for permanency planning.
- b) On this point, the committee also felt that the rule was not required to specify whether a party has a right to a contested hearing or not. The committee suggested refocusing the rule to highlight the court's obligations. Stated another way, the purpose of the hearing is for the court to have enough information to make the required findings.

- c) The committee pointed out that the reference to “30 days” does not conform to the rule of 7. The use of “30 days” was derived from the EPP statute. The committee recommends conforming to the rule of 7.
- d) The committee also thought making a reference to findings that the permanency statute requires the court to make would be helpful.

(3) Paragraph (d) and (e):

- a) The committee agreed to delete paragraphs (d) Modification of Permanency Plan and (e) Review of the Permanency Plan.
- b) The committee felt the purpose of the hearing is for the court to receive enough information to make the findings required by the statute and reiterates its suggestion that the rule focus on the court’s obligations.

(4) Original paragraph (f) (n/k/a paragraph (d)): The committee believed that this part of the rule would be incredibly helpful and praised the subcommittee for including it.

- a) The committee recommended restructuring the paragraph into (1) age appropriate consultation mechanisms and (2) how the consultation is memorialized.
- b) There was a brief discussion about whether the court’s consultation with the child must be under oath, and the committee decided not to mention an oath because there is no clear answer to that question.

(5) Original paragraph (g) (n/k/a (f)): The committee suggested including that Court must ask child about his opinion on his or her desired permanency outcome, pursuant to 42 U.S.C. 675a(a)(2)(A).

(6) The committee agreed to send back the rule to the subcommittee to consider the committee’s feedback and to revise the draft.

IV. New Business

- (1) The next meeting will focus on wrapping up permanency and then jumping to pre-adjudication and/or termination.

The Committee adjourned at 10:38 AM.

Respectfully Submitted,
J.J. Wallace

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of July 27th, 2018 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:04 AM 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	
Jenny Bender		X
Jennifer Conn	X	
Sheri Danz	X	
Traci Engdol-Fruhworth		X
Judge David Furman		X
Ruchi Kapoor	X	
Andi Truett for 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
Pam Wakefield	X	
Chief Judge Jeffrey Wilson		X
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Attachments & Handouts:

- (1) Draft Minutes of the 5/4/18 meeting**
- (2) Permanency Planning Rule & Notice Proposal**
 - a. People in Interest of S.L., 2017 COA 160**
 - b. People in Interest of H.K.W., 2017 COA 70**

- (3) Email from Ruchi Kapoor Re Ineffective Assistance of Counsel Group**
- (4) Termination Subcommittee Proposal**
- (5) Email from Judge Freyre Re Plain Error Review**
 - a. Crim. P. 52**
 - b. C.R.C.P. 61**
- (6) Email from Judge Freyre Re C.R.C.P. 54(b) certification**
 - a. *People in Interest of R.S.*, 2018 CO 31**
- (7) Termination proposed forms:**
 - a. Notice of Hearing**
 - b. Advisement**
 - c. Pre-trial Conference Order**

II. Chair's Report

- A. The May 4, 2018 minutes were approved without amendment or objection.
- B. Lunch will arrive at around 11:45 PM
- C. The next meeting will be Friday, September 14th at 9 AM. The meeting will be held in room 2B, which is on the second floor between the court building and the tower building. To reach the conference room, take the elevators in the tower building to the 2nd floor and then follow the signs.

III. Old Business

- A. Permanency Planning Proposal

One committee member questioned including the reference to the federal statute on OPPLA (42 U.S.C. § 675a(a)(2)(A)) in the notice. The subcommittee included the reference because that requirement is often overlooked. The committee decided to leave the language parroting the federal statute but took out the specific cite to the statute. It was thought that avoiding statutory citations prevents later cross-reference problems if the statute is moved or changed.

The committee would like the rule to specifically address the issue of “developmentally appropriate” and have the rule reflect what to do if the child is a baby.

The committee does not like the phrase “speak with a child separately,” and discussed using “in camera” instead. After discussion, the committee agreed that the phrase “speak with the child separately” comes from the statute, section 19-1-106(5), and has been recently addressed in two cases. Thus, it has become its own term of art.

The committee members questioned who gets the transcript of an in camera hearing and expressed concern that, years later, a transcript could be inappropriately released. Terri Morrison pointed out that CJD 05-01 controls access to court records and JV cases are not available to nonparties.

The committee suggested drafting a comment (1) noting that case law has declined to extend the UMDA statute, section 14-10-126(1), C.R.S. (2017) to D&N cases and (2) referring to CJD.

IV. New Business

A. Report from Ineffective Assistance of Counsel Group-Ruchi Kapoor

Ruchi explained that the group she was working with had substantively productive discussions, but they were split on how they should proceed. Half the group wanted to start drafting a rule; the other half wanted further discussions before committing to a rule. Ruchi asked to be put on the agenda to get guidance from the committee as to whether her group should move forward with their work and, if so, what form their work should take (drafting a rule; drafting a report).

She explained that her group had worked from an ALR article and a law review article each examining the ways courts have addressed ineffective assistance of counsel claims in the D&N context. There are two main approaches: (1) the direct appeal approach and (2) the C.R.C.P. 60 approach. She said most states, like Colorado's current case law, follow the direct appeal approach. Most IAC claims in Colorado are resolved because the parent fails to show prejudice. She related a few examples of what other states do differently from Colorado that address difficulties appellate counsel face in raising IAC claims on direct appeal such as allowing the submission of new evidence related to the IAC claim to the appellate court.

The chair asked the committee members if they believed they had enough information to vote on whether the group should continue working towards drafting a rule or not. The committee members unanimously believed they had sufficient information to vote on whether to continue the group. The committee voted 1-15 against the group continuing its work. The chair thanked the group chair for her work and for presenting the different viewpoints to the committee. The chair asked the group chair to pass along the thanks of the committee to the group members.

B. Termination Chief Judge O'Hara, Magistrate Bartlett, and Sheri Danz

Chief Judge O'Hara began by stating that the subcommittee held several discussions, but they did not believe that any termination-specific rules needed to be drafted given the committee's decision not to adopt rules re-stating statutes or explaining case law. After a brief discussion about whether a rule regarding children speaking with the court at termination (similar to the permanency hearing rule), the committee decided that it was unnecessary. Chief Judge O'Hara said that if any committee member feels like a particular rule would be helpful, email him and let him know.

The subcommittee did think that forms may be helpful, so they provided forms for: advisement, notice, and a pretrial conference order.

The proposed advisement could be an oral advisement by the court or a written advisement-the subcommittee's goal was to provide a comprehensive list of everything that could be included in an advisement. The committee discussed the individual advisements and felt that language regarding confidential communications with an expert and the right to prevent the expert from testifying should be removed because they may not be consistent with case law.

The committee felt there was no need for a sample motion to be included with the notice of termination hearing. The committee rephrased the notice to conform to the new procedure in section 19-3-607 for appointing experts (appointments go through ORPC instead of through the court).

The committee felt that the pretrial conference order should be retitled "Case Management Order-Termination Hearing" to conform to the discovery/disclosure rule case management order applicable throughout a D&N case. The committee cross-referenced the discovery/disclosure rules and noted that those rules would guide the termination hearing and there was a suggestion that, if the committee was to adopt a termination rule, it should include: an advisement, a reminder about ICWA, and a reminder for parties to look back at the discovery/disclosure rule and sample case management order.

C. Plain error review

The chair asked the committee if there was a need for a rule setting out a standard of review and what that standard would be. The committee reached no consensus on this issue and did not feel it had enough information. The chair asked the committee to continue to think about the issue until the next meeting; J.J. Wallace will research what other states do and provide more information to the committee at the next meeting.

D. C.R.C.P. 54(b) Certification

After briefly discussing whether the rules should include some sort of mechanism like C.R.C.P. 54(b) certification and noting that the supreme court specifically did not address C.R.C.P. 54(b)'s application in *People in Interest of R.S.*, 2018 CO 31, the committee decided to take no further action on this agenda item.

V. **Adjourn**

Judge Ashby made some closing remarks about future planning. She wants the committee to start thinking about the things we need to do to wrap up the dependency and neglect rules. These include the subcommittees thinking about comments that need to be included with rules. J.J. Wallace will email subcommittee chairs references from past minutes where the committee thought a comment might be appropriate. Judge Ashby also suggested there may be some work done via email in the future.

The Committee adjourned at 1:48 PM.

*Respectfully Submitted,
J.J. Wallace*

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of November 2, 2018 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 AM 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	
Jenny Bender	X	
Jennifer Conn	X	
Sheri Danz	X	
Traci Engdol-Fruhworth	X	
Judge David Furman	X	
Melissa Thompson for Ruchi Kapoor	X	
Andi Truett for 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	
Pam Wakefield	X	
Chief Judge Jeffrey Wilson		X
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Special Guests:

For Dispositional review subcommittee: Katherine Gregg and Andrew Poland.

For Pre-Adjudication subcommittee: Allison Bettenberg and Blair McCarthy.

Attachments & Handouts:

- (1) 7/27/18 Draft Meeting Minutes
- (2) Memo Re: Harmless Error & Plain Error
- (3) PreAdjudication Redlined & Clean
- (4) Present C.R.J.P.

II. Chair's Report

- A. The July 27, 2018 minutes were approved with two corrections to the attendance.

III. Old Business

- A. Harmless Error & Plain Error

J.J. Wallace briefly recapped the memo distributed with the meeting materials providing a background on the issue. The committee held a thorough discussion on the pros and cons of adopting a rule setting out a standard of review in the juvenile rules. Some committee members felt a rule adopting plain error would send a message to trial courts to be concerned about the fairness of the proceedings, even if no objection was made. Some committee members also felt a plain error rule might help protect the appellate rights of pro se litigants. Other committee members were concerned that including a plain error rule that allowed parties to routinely raise unpreserved issues would lengthen the appeals process and, correspondingly, lengthen permanency for children. The committee also discussed the challenges of adopting a new rule when the present juvenile rules reference the civil and criminal rules. On this issue, some committee members felt it would be difficult to craft a new rule: there's not clarity in case law or consensus among the committee members about what a new rule would say.

On balance, the committee agreed to table the issue. The committee decided that the issue has not been well-developed in case law; it may come up more in the future, which would develop the issue; and there's a lack of clarity on what the rule would say. The committee agreed that the issue may be revisited in the future.

IV. New Business

- A. Dispositional Review-Judge Simonet, Jennifer Conn, Wendy Lewis, & special guests Katherine Gregg & Andrew Poland.

Judge Ashby asked for clarification on the structure of the proposal. Judge Simonet clarified that the underlined headings are intended to designate separate rules.

The committee suggested that the proposed rules conform to more rule-like language. For example, under "Purpose of the Dispositional Hearing," the committee recommends beginning with "The court shall hold a dispositional hearing and shall consider: [the purposes articulated in a-c]." J.J. Wallace kept notes of the suggested

changes by the committee and will meet with the subcommittee before the subcommittee's next presentation to the committee to assist with this suggestion.

The committee discussed the reference to a continuance in the "Timing of a Dispositional Hearing" section. The committee members recognized that there are several different standards for continuances, which sometimes leads to confusion. For EPP cases, there is a statutory requirement that the court find good cause for the continuance and that the continuance serve the child's best interests. §§ 19-3-104, 19-3-505(7)(b), 19-3-508(1). For older children under the statutes, the court must find good cause exists, § 19-3-505(7)(b), and must also find that delay serves the child's best interests. § 19-3-508(1). CJD 96-08(4) adds a "manifest injustice" standard to a continuance.

In discussing CJD 96-08, the committee also noted that the requirement to file the caseworker's report 5 days before the hearing comes from the CJD and is included in the proposed rule under "Court Report." The committee believes that, along with the proposed set of rules, the committee should make recommendations regarding CJD 96-08 when the proposed rules are submitted to the court to assure consistency between them. The committee also stated that the 5-day time period should probably conform to the "rule of 7" and be changed to 7 days.

The committee talked about problems with the timing of dispositional hearings and the difficulties that lead to continuing the hearing. The committee agreed that the hearing is often continued because the caseworker's report is late, the caseworker has not met with the family (respondents & child) before the hearing, or the respondent/GAL has not been able to review the caseworker's report before the hearing. Sometimes the parent is not engaged or is incarcerated, making reviewing the report within the short time period before the hearing difficult. The committee members related strategies they used to address these problems and minimize delays. These include: briefly passing the case so that RPC and/or the caseworker can speak with the respondents about the caseworker's report in an attempt to resolve any issues that day; adopting the treatment plan as proposed, but allowing a time period for written objections to the plan; or setting a new dispositional hearing in 30 days (with or without adopting the proposed treatment plan in the interim).

The committee agreed that, since there are several different approaches, the rule should be fashioned to give the court discretion to utilize all these approaches (and the subcommittee should think about drafting a comment to list these options), but it was emphasized that in affording discretion to address the various circumstances that can result in delays, the committee does not want to normalize delay-it should still be the exception.

The committee also discussed the need for the dispositional rules to address amendments/updates to the treatment plan. One committee member explained that service providers aren't usually identified in the initial treatment plan, but it's useful to have that information formalized in writing in the treatment plan at some point.

Others commented that stipulations and/or amendments to the treatment plan are sometimes done on the record at a review hearing and are never written down. The committee sees a need for the rules to require a written memorialization of any changes to the treatment plan. Also, the committee asked the subcommittee to consider adopting a timeline for submitting proposed amendments to the treatment plan before the hearing (although some committee members noted that many jurisdictions' practice is to do oral motions and this would be a substantial change).

The committee discussed whether to include "best practice" requirements for the treatment plan (i.e., a-d under "Court Report") in the rule or in a comment. *See also* §§ 19-1-103(10) (defining "appropriate treatment plan"), 19-1-107(2.5) (requiring listing of services, priority of services, and describing services in EPP cases). The committee decided that the rules should avoid pure best practices and focus on procedures. As a general FYI, Sheri Danz mentioned that the NCJFCJ has provided Enhanced Resource Guidelines that provide useful best practices. J.J. Wallace will email the committee a [link](#) to the guidelines.

At the close of the meeting, the committee offered the following general guidance for the subcommittee to use in developing a new draft to present to the committee (sometime in early 2019):

- Think about the structure of the proposal keeping in mind consistency with other rules;
- Think about the procedures followed in dispositional review and focus on grouping the procedures into rules with related subsections by topics e.g., Hearing (Purpose, Notice, Timing, Advisement, Findings).

B. PreAdjudication-Judge Slade & Traci Engdol-Fruhworth and special guests Allison Bettenberg & Blair McCarthy

Tabled to the December 7, 2018 meeting.

C. Review Present C.R.J.P 4 through 4.5

Tabled to the December 7, 2018 meeting.

D. Next Meeting

The committee chair is unavailable for the meeting scheduled for December 14, 2018, and she asked if committee members would be available to meet on December 7th instead. Most committee members were available the afternoon of December 7th, so the meeting was changed to December 7, 2018 from 1 PM to 4 PM. The meeting will still be held in the supreme court conference room.

The chair also told the members that the 2019 meeting schedule will be set soon and committee members will be notified of the schedule by email.

V. Adjourn

The Committee adjourned at 11:48 PM.

*Respectfully Submitted,
J.J. Wallace*

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of December 7, 2018 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 1:00 PM 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
Jennifer Conn		X
Sheri Danz	X	
Traci Engdol-Fruhworth	X	
Judge David Furman	X	
Ruchi Kapoor	X	
Andi Truett for Shana Kloek	X	
Wendy Lewis		X
Peg Long	X	
Judge Ann Meinster	X	
Joe Picard for 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	
Pam Wakefield		X
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Special Guests:

For Pre-Adj: Blair McCarthy

Attachments & Handouts:

(1) 11/2/18 Draft Meeting Minutes

(2) PreAdjudication Redlined & Clean

(3) Copy of Present C.R.J.P.

II. Chair's Report

- A. The Chair announced membership changes to the committee. Chief Judge Wilson has resigned from the committee. Peg Long, Colorado CASA board member, has joined the committee as the CASA representative.
- B. The November 2, 2018 minutes were approved without amendment or objection.

III. Old Business

A. Pre-Adjudication

Pre-Adjudication co-chair Judge Slade is currently in trial. Co-chair Traci Engdolf-Fruhworth and subcommittee member Blair McCarthy led the discussion.

They explained that they began with the existing version of the rules, starting with C.R.J.P. 4. The draft rule adds who may bring the petition, references to who must and may be named respondents, and a reference to the statute on service. The committee clarified the rule to note that there is a distinction between the County attorney (or designate) and the department of social services. The committee also settled on referencing the statute instead of specifically describing the respondents (or special respondents) that must or may be named.

The committee then talked about the utility of a rule that just references the statute. Those in favor of referencing the statute believed that having those references readily available promotes ease of use. Those opposed felt that providing a list of statutory references to assist lawyers was not the best use of a rule.

The committee asked what problem areas the subcommittee saw in current procedural practices that needed clarification. The subcommittee related that they discussed two areas where there is a procedural gap. First, the statute on amending a petition, section 19-3-505(4), C.R.S. (2018), covers amending a petition during trial, but there is no deadline for amending the petition before trial. The subcommittee believes a deadline would be helpful for practitioners. The committee agreed and suggested a 7 day deadline.

Second, the subcommittee discussed current problems with adding or dismissing parties and the standard a court must use to decide that issue, but the subcommittee felt that the legal standard for this decision is not clear and so drafting a rule would be a substantive decision on the law. The committee also noted that the proposed adjudication rules included a rule on joinder and that rule crafts procedures for joinder but does not provide any standards for joinder.

The subcommittee noted that there is quite a bit of overlap between their proposed rules and other subcommittees' work. They provided a rule on service of because pre-adjudication can be a heavy motions stage. The committee believes that generally

applicable rules, such as a rule governing motions, should be one rule, but directed subcommittees to identify any special needs their group feels should be included in the general rule. For pre-adjudication, procedures on emergency motions may be helpful (emergencies other than ex parte motions under 19-3-403, C.R.S. (2018)). The subcommittee felt a conferral requirement, even on emergency motions, was important. One committee member indicated that his jurisdiction has an administrative order on emergency motions and believes any rule addressing emergencies should be flexible so that diverse needs across the state could be met. Another member said that, in order to provide flexibility, the rule could set an outside limit which allows jurisdictions the flexibility to proceeding within those outside limits. The subcommittee also highlighted a special problem with service of motions in dependency and neglect cases, especially at the pre-adjudication stage. E-filing is not currently available for D&N case types, so everything is paper-filed with the court. Paper filing and mailing is not very efficient.

The committee members did not think that D&N e-filing would be rolled out in the near term, so any service rule should be flexible and account for the many different service methods currently being used. The subcommittee related that, because e-filing is not available for D&N cases, many jurisdictions have alternative electronic service agreements between counsel.

C.R.C.P. 5(b)(2)(D) authorizes service by “other electronic means” if written consent is given. Written consent includes placing an email or fax in the caption of any filing. Responsive pleadings are not required in D&N cases, so at this early stage, the subcommittee pointed out that RPC may not have made a filing with an email or fax. The committee feels RPC need timely notice of motions and electronic means are the most efficient.

For example, Douglas County uses a private company, Box, to facilitate electronic delivery of discovery and other pleadings. Other counties have an agreement to use email. Committee members pointed out that these agreements (to use Box, to use email, to use a courthouse mailbox) may not be reflected in writing in each case, but no practitioner indicated that there were problems using these systems. Some practitioners also indicated that for some respondents, particularly the homeless, notice by text message is best.

In this case, a broad rule, which deviates from the civil rule by authorizing alternative service without written consent may be necessary to match current practices. A comment may also be necessary to explain and give examples of the “other electronic means” which are authorized. The committee also agreed that an inmate filing rule was needed for D&N cases.

In this case, a broad rule, which deviates from the civil rule by authorizing alternative service without written consent may be necessary to match current practices. A comment may also be necessary to explain and give examples of the “other electronic means” which are authorized. The committee also agreed that an inmate filing rule was needed for D&N cases.

Because service of motions and other pleadings is broadly applicable, J.J. Wallace will email the subcommittee chairs with proposed rules in these areas: discovery; adjudication; and pre-adjudication and will send the versions of each group in the hopes that the subcommittees can combine their portions into one generally applicable rule.

The subcommittee noted that the current version of C.R.J.P. 1 refers to the C.R.C.P. There was a brief discussion on referring to the C.R.C.P. Some committee members feel strongly that juvenile cases are different and do not involve the same interests as the average civil case, so the juvenile rules should be separate and self-contained and not refer to the C.R.C.P. Other members felt that referring to the C.R.C.P. is efficient and having new and different rules within the juvenile rules covering similar subjects would increase litigation. Committee members related that, in their experience, subcommittees look to the civil rules as a starting place. While consensus on whether to refer to the C.R.C.P. or to make the juvenile rules self-contained was not reached, the committee did agree that the committee and subcommittees should highlight any area in which the civil rules do not suit juvenile cases.

The rule on civil rule on captions, C.R.C.P. 10, does not work for juvenile cases because there are different kinds of parties in D&N cases.

The proposed rule like C.R.C.P. 11 is the same as the civil rule. Committee members related that they have occasionally seen limited representation in D&N cases.

The committee also related that, in looking at the pre-adjudication stage of a case, they believed some procedural issues at this stage overlap with procedural issues of other stages, particularly adjudication.

The subcommittee also updated the first appearance advisement rule. Their new draft includes a requirement that the court ask about ICWA. In order to determine UCCJEA issues, the subcommittee also recommends requiring an affidavit as to children, which the subcommittee adapted from domestic relations forms. Committee members agreed that late-revealed information on other child custody cases can set back D&N cases and delay permanency, so getting the information early is essential. The committee also noted that the discovery rules have made this information a priority by making it a mandatory disclosure.

The subcommittee also discussed the two issues referred to the subcommittee at previous committee meetings. First, the subcommittee was asked to consider whether there should be a rule that the court must appoint counsel whether a parent appears or not. For various reasons, the subcommittee did not think that rule would be beneficial. Second, the subcommittee considered a rule requiring all courts to adopt a uniform CMO in D&N cases. On this issue, the subcommittee believes its draft addresses the procedural problems a CMO would address. It believes formal CMOs should be left to the jurisdictions. The committee also noted that comments could be used to address best practices and the adoption of CMOs.

B. Review Present C.R.J.P 1 through 4.5

As the meeting came to a close, the committee's attention was drawn to the present C.R.J.P. included in the materials packet. Committee members were invited to review the present rules before the next meeting to determine if there is anything that has not been covered in the rule drafts or a present rule that should be modified.

In a brief review, committee members noted that C.R.J.P. 2.1 (appointment of counsel) may need updating to refer to CJD 16-02; C.R.J.P. 4.5 (contempt) may need to be updated to match actual practices; C.R.J.P. 4.3 (jury trials) may need clarification on peremptory challenges. *See People in Interest of J.J.M.*, 2013 COA 159. J.J. Wallace will send an email asking committee members to review the current list of rules and email concrete feedback on suggested changes to the rule and they will be on the agenda for the February meeting for full committee discussion.

IV. Adjourn

The meeting adjourned at approximately 3:45 PM. The next meeting will be on Friday, February 1, 2019 at 9 AM in the supreme court conference room.

Respectfully Submitted,
J.J. Wallace

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of February 1, 2019 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 AM 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	
Howard Bartlett		X
Jennifer Conn		X
Sheri Danz	X	
Traci Engdol-Fruhworth		X
Judge David Furman	X	
Ruchi Kapoor	X	
Andi Truett for Shana Kloek	X	
Wendy Lewis		X
Peg Long	X	
Judge Ann Meinster	X	
Judge Dave Miller	X	
Chief Judge Mick O'Hara		X
Trent Palmer	X	
Professor Colene Robinson		X
Judge Fran Simonet		X
Judge Traci Slade		X
Magistrate Kent S. Spangler	X	
John Thirkell	X	
Pam Wakefield	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	
Judge Craig Welling, Chair Designate	X	

- Attachments & Handouts:**
(1) 12/7/18 Draft Meeting Minutes
(2) Present C.R.J.P.
(3) Unresolved issues history

II. Chair's Report

- A. The 12/7/18 meeting minutes were approved without amendment.
- B. The chair announced that, upon her retirement in May, Judge Welling of the Colorado Court of Appeals will take over as chair of the committee.

III. Old Business

A. Review of Present C.R.J.P

1. The chair began the discussion with C.R.J.P. 1 (Scope) and the committee discussed whether the rules should maintain one scope for all rule areas or whether each subject area (D&N, delinquency, adoption, etc.) should have its own scope. The committee agreed that one scope/applicability rule may be appropriate for general juvenile purposes (e.g. "These rules govern proceedings brought in the juvenile court under Title 19, 8B C.R.S. (1987 Supp.), also hereinafter referred to as the Children's Code"), but that the rest of Rule 1 (applying the C.R.C.P. to civil cases and the Crim. P. to delinquency cases) should be delegated to the applicable subject areas and each subject area may need its own scope.

The committee also briefly discussed the reference to the civil rules in the current Rule 1. The committee felt that some incorporation of specific civil rules may be appropriate because there is no specific need for different procedures in juvenile cases (one member specifically mentioned the procedures for noticing and setting a deposition). However, the committee felt that the juvenile rules should specify when civil rules are being incorporated and not leave open the application of all civil rules.

This led to a general discussion of the structure of the present rules: Part 1 (applicability); Part 2 (general provisions); Part 3 (delinquency); Part 4 (D&N); Part 5 (UPA); Part 6 (adoption & relinquishment); & Part 7 (support). The committee felt that Parts 1 & 2 will need restructuring and revisiting throughout this process of revising the rules. Many rules in part 2, e.g. appointment of counsel, will be taken up in the different subject areas because the procedure is different depending on the subject area. Ruchi Kapoor indicated that her office began looking at a new rule 2.1 in the D&N context but needed more time to examine practices in different jurisdictions. She stated she may have something for the committee to look at in March.

2. Rule 2.3 Emergency Orders

After discussion, the committee agreed that an emergency orders rule is useful. General feeling was that this rule fills a gap in the statutes and provides procedures for the court to handle emergency situations ex parte (not involving custody, which is sufficiently covered by sections 19-3-403 and -405). Committee members felt the rule served a useful purpose because the court's emergency procedures are difficult to parse out from present statutes. Some committee members felt that the rule could further clarify

emergency procedures by, for example, providing a mechanism/time period for a return after an ex parte order is issued. The committee also agreed that the nature and character of these kinds of orders are different in D&N cases than they are in delinquency cases, so the committee suggests taking the D&N portion of the rule out of the general provisions section and making the rule D&N specific. Other committee members are also aware of legislation that is in fiscal notes that would impact this provision in the delinquency context. The committee will keep that in mind when delinquency is taken up.

The committee would like more information from stakeholders on how this rule is used. J.J. Wallace will email a Word document of the current rule to some committee members to circulate to their stakeholders seeking feedback.

3. Rule 2.4 Magistrates

C.R.J.P. 2.4's language is the exact same as in C.R.M. 5(f), titled "General Provisions." J.J. Wallace will research the adoption of this language in the rules before the next meeting to provide more information on whether this language remains necessary for the C.R.J.P.

4. Rule 4.5 Contempt

Committee members noted that section 19-3-504 authorizes contempt in certain circumstances. But committee members felt that incorporating C.R.C.P. 107 (with shorten time frames) as provided in the current rule is useful to curb extreme circumstances not covered by the statute, e.g., threats of harm to a caseworker or GAL. There was a suggestion that the rule could address any confusion between the statute and the rule.

5. Rule 4.3 Jury Trials

The committee agreed that there are difficulties with the rule as written which causes unfair allocations of peremptory challenges and that the rule should be modified. The rule gives peremptory challenges to respondents, GALs, and the Petitioner. Often respondents are not aligned and the GAL and the petitioner are aligned. Or a group of children will have several different GALs and the children's interests are not aligned. Because there are often uneven numbers of parties, some of which align, but some of which don't, the peremptory challenges can be weighted to the advantage of one side. The committee feels that the solution to this problem is to give the trial judge discretion to allocate the peremptory challenges in a manner that is fair. The committee also feels that the total number of peremptory challenges should not be increased.

J.J. Wallace will research other states' rules and provide examples to the committee of what other states do.

IV. New (Yet Old) Business

A. Reaching Consensus: Revisiting Matters Left Unresolved at Previous Meetings

1. Default vs. Non-Appearing Party Rule

The committee members agreed that default in a dependency and neglect case is not a best practice and no members of the committee used it. One member mentioned that even under the civil rules default requires evidence, so the member did not see default being more useful or easier than the non-appearing party rule. Committee members did not want to encourage use of default and felt that adopting a default rule would encourage it. One committee member noted that not having a default rule would not preclude parties from using default. Another member felt that the default procedure had no benefit in a dependency and neglect case. David Ayraud, co-chair of the adjudication subcommittee that drafted these rules, mentioned that some counties do use default. Default has also been addressed in case law.

The committee decided to frame the issue for a yes/no decision: Does the committee want to recommend to the supreme court that the default procedure be available in dependency and neglect cases? The chair asked members to reach out to stakeholders and practitioners for feedback on using default procedures in the expectation that a final yes/no decision will be made at the March meeting.

2. Continued (Deferred) Adjudications

No member of the committee had experience using a split process. The committee agreed to add language to the advisement section of the rule that all parties, including the child, must be advised of the proposed terms and conditions of the continuance (deferral). The committee also felt that the rule should specify procedures for amending the terms and conditions of the continuance (deferral). Committee members volunteered to work on updating the rule with the additional language for the next meeting. J.J. Wallace will email them rule.

3. Intervention Rule

The intervention rule was modified to reflect the phrasing of the statute.

4. One Evidence Rule or Evidence in Applicable Rules

J.J. Wallace will email subcommittee chairs the two rules where evidence is mentioned. The committee chair asked the subcommittee chairs to put on their subcommittee hats and see if any additions were needed.

5. Mini Termination Rule

With the newly framed understanding that the committee will be advising the supreme court whether it should adopt procedures, Sheri Danz will email her subcommittee members and reexamine the issue with this framework in mind.

6. Keep Rules Self-Contained vs. Refer to the C.R.C.P.

Resolved in previous discussion. *See* (III)(A)(1) above.

V. Adjourn

The next meeting is scheduled for March 8th. However, many committee members indicated that they had an appellate training that day. J.J. Wallace will send a poll email to all committee members to see which date works better for the next meeting: March 8th or March 15th. She will notify committee members which meeting date works for the most people via email.

Respectfully Submitted,
J.J. Wallace

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of March 15, 2019 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 AM in the court of appeals full-conference room on the third 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
Jennifer Conn		X
Sheri Danz	X	
Traci Engdol-Fruhworth	X	
Judge David Furman	X	
Ruchi Kapoor	X	
Shana Kloek	X	
Wendy Lewis		X
Peg Long	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	
Pam Wakefield		X
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	
Judge Craig Welling, Chair Designate	X	

Attachments & Handouts:

- (1) **Rule 2.1 (appointment of counsel) draft**
- (2) **Rule 2.3 (emergency orders) draft**
- (3) **Memo on Rule 2.4 (magistrates)**

- (4) Rule 4.5 and § 19-3-504, C.R.S (2018)**
- (5) Memo on Rule 4.3(b) (jury trial)**
- (6) Continued (deferred) adjudications draft rule**

II. Chair's Report

- A. The 2/1/19 minutes were approved without amendment.

III. Old Business

- A. Review of Present C.R.J.P
 - 1. Rule 2.1 (appointment of counsel)

Ruchi Kapoor indicated that the biggest problem she sees state-wide with counsel is an absence of uniform withdrawal requirements. Judge Ashby added that another problem came up at the appellate training last week-confusion over counsel when the court of appeals does a limited remand for ICWA findings: Does appellate counsel deal with the issue? Is trial counsel from before the appeal still appointed? Should a new trial counsel be appointed for the ICWA remand proceedings?

Ruchi related that ORPC has a policy to leave trial RPC in place until the appeal is over and a mandate is issued. She says that new trial counsel is substituted during the appeal if appellate counsel raises an ineffective assistance of counsel claim on appeal. She stated that it's ORPC's practice that when an appellate counsel decides to raise an IAC claim, the appellate counsel contacts her so she can facilitate a substitution of counsel in the trial court. This should cover limited remand situations, but there has been resistance and some jurisdictions do not follow ORPC's policy.

On the court side of things, a clerk of court indicated that counsel, as listed in Eclipse, is a case-by-case scenario. If appellate counsel files an entry of appearance in the trial court and it looks like a substitution of counsel, the clerk's office will only list appellate counsel in Eclipse. If the entry of appearance makes clear that counsel is appellate counsel, both trial counsel and appellate counsel will be listed in Eclipse. Ruchi clarified that sometimes appellate counsel enters his or her appearance in the trial court case in order to gain access to trial court records. Ruchi stated that appellate counsel often does not enter an appearance in the trial court case because they do not need access to the trial court record (an electronic record on appeal has been provided to them through the appeal).

The question was asked why substitutions of counsel require court order in D&N cases (the usual civil rule makes substitution of counsel automatic with no need for a court order). It was explained that the CJD and statutes require court appointment for RPC and GALs (and they construe this as applying to substitutions) and the court's oversight for substitutions is preferred.

Overall, committee members felt that how trial court counsel's representation is substituted, terminated, the role of counsel in limited remand situations, and the duration of counsel's representation is county-by-county and state-wide consistency would be helpful. Although ORCP has a policy on this, the committee felt a rule would be more effective and would also apply to private counsel, which could be beneficial. The committee asked Ruchi to look at these issues and come up with a framework for addressing them. Committee members recommended starting with the ordinary circumstance and then the special or extraordinary circumstance. Ruchi should also look at to whom the rule applies: just RPC? Private counsel? GALs? Although, on this issue, Sheri Danz related that she did not see these kinds of problems with GAL appointments because the CJD controlling GALs was recently clarified to address GAL appellate responsibilities.

Another committee member asked if we needed a rule that designated the formal end of a D&N case because sometimes questions over termination of the court's jurisdiction arise. Committee members agreed that this was an issue but thought it might be a best addressed separately and not necessarily in a rule discussing counsel.

2. Rule 2.3 Emergency Orders.

Last meeting, individuals were asked to seek feedback on the current emergency orders rule. Feedback from GALs indicated that the rule is most often used for medical needs. GALs suggested providing more specific procedural protections in the rule, including tasking the court or movant with sending timely notice of the order to the GAL (and other parties) and having the order include enough findings so that the parties who were not at the hearing can determine the basis of the order. Feedback from RPC made similar suggestions to beef up procedural safeguards. Judicial feedback pointed out that the rule is most often used when there is not a pending D&N case. Judicial officers favored flexibility within the rule-this is especially important for judges in rural jurisdictions that may only be in smaller counties once a week. They also pointed out that emergency orders under section 19-1-104(3)(b), C.R.S. (2018) are only valid for 24 hours and the rule does not refer to this limitation (and if the emergency has not resolved within 24 hours, the order must be continuously re-issued). County attorneys stated that, if the county has temporary legal custody, emergency orders may not be needed for them to act, but as a general rule, the county tries to reach out to the parents in an emergency situation.

Judge Ashby will email feedback to Magistrate Spangler and the committee will take up the issue again at the next meeting.

3. Rule 2.4 Magistrates:

The magistrate rules (C.R.M.) are overseen by the civil rules committee. Committee members generally agreed that there are difficulties in the interplay of the C.R.M and the Children's Code statute on magistrates. Judge Ashby asked that committee members email her and Judge Welling (the chair designate) with specific issues that need to be addressed and they will reach out to Judge Berger, the chair of the civil rules committee.

4. Rule 4.5 Contempt

The committee briefly discussed section 19-3-504(1) authorizing contempt for failure to appear upon summons, and C.R.C.P. 107, the rule of procedure on contempt. At the last meeting, Pam Wakefield mentioned harmonizing the statute with the rule to cover both situations. Traci Engdol-Fruhworth will talk to Pam Wakefield about this and the issue will be tabled until the next meeting.

5. Rule 4.3 Jury Trials

The committee reviewed the memo on other states' rules. The committee agreed that peremptory challenges should be allocated per aligned side and that each aligned side should get equal numbers of challenges. John Thirkell (with assistance from J.J. Wallace) will work on developing a draft rule incorporating the committee's ideas.

IV. New (Yet Old) Business

A. Reaching Consensus: Revisiting Matters Left Unresolved at Previous Meetings

1. Default vs. Non-Appearing Party Rule

The following feedback was shared with the committee. From judicial officers:

- One judge noted that it would be nice to have a true default rule as an efficiency, but noted that right now, his courtroom does short evidentiary hearings;
- Some judges worried about increase docket loads if there was no default;
- Most concerns seemed driven by a desire for a mechanism to secure an adjudication when a respondent does not participate (and the non appearing party rule would do this)

The Chair suggested that the committee hold off formal voting for a better attended meeting. J.J. Wallace will circulate information setting out the historical discussion of this issue among committee members for the next meeting and will include the current drafts of the non appearing party rule and the default rule.

2. Continued (Deferred) Adjudications

The committee decided that the advisement section of the rule should reflect that all parties are aware of the terms and conditions of the continued adjudication. There was also a suggestion to add a paragraph setting out a procedure to amend the terms and conditions. Also, it was pointed out that the rule, as drafted, only covers when a respondent fails at the deferred adjudication and procedures for when a respondent succeeds should be added. Sheri Danz and David Ayraud will update the proposed rule with these changes, which will finalize the rule.

3. Mini termination Rule

Sheri related that the subcommittee will reconvene and decide if termination needs to be referenced or addressed in other rules.

V. New Business

1. The chair mentioned that discussions are underway regarding how to implement the Family First Prevention Services Act (FFPSA). FFPSA allows states to use IV-E funds for prevention services that would allow "candidates for foster care" to stay with their

parents or relatives. Committee members do not have complete information on FFPSA's implementation in Colorado, but committee members should be alert to the issue in case of impacts to the rules.

2. ICWA subcommittee update: they have a draft set of rules.

3. J.J. Wallace will email one document with all the draft rules before the next meeting. Committee members are asked to review the rules. Subcommittee chairs are asked to think if there is a need to add comments or make other revisions.

VI. Adjourn Next Meeting May 3rd

The Committee adjourned at 11:33 PM.

*Respectfully Submitted,
J.J. Wallace*

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of May 3, 2019 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 AM 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
Jennifer Conn		X
Sheri Danz	X	
Traci Engdol-Fruhworth	X	
Judge David Furman		X
Ruchi Kapoor	X	
Shana Kloek	X	
Wendy Lewis		X
Peg Long	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
Pam Wakefield	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	
Judge Craig Welling, Chair Designate	X	

Attachments & Handouts:

- (1) Rule 2.1 (appointment of counsel) draft
- (2) Rule 2.3 (emergency orders) draft
- (3) Contempt Email

- (4) Default Comments**
- (5) Email from David Ayraud re: formal end of D&N case**
- (6) HB 19-1232 (ICWA)**
- (7) All Draft Rules (emailed separately)**

II. Chair's Report

- A. The 3/15/19 minutes were approved without amendment.

III. Old Business

- A. Review of Present C.R.J.P

- 1. Rule 2.1 (appointment of counsel)

Ruchi Kapoor related that her office worked on the draft and combined aspects from the civil rule (C.R.C.P. 121 § 1-1) and from the criminal rule (Crim. P. 44). They strove for consistency between appointed RPC and private counsel and also for consistency with CJD 16-02 (which ORPC is currently updating).

Ruchi explained that subsection (c)(3) (substitution without leave of court) was drafted to address emergency situations and to conform to the CJD. By way of example, she related that ORPC recently had a situation where an RPC passed away during a pending case. The client needed an immediate substitution of counsel. This section was drafted to address concern over a form order lingering in the trial court's inbox. But, other committee members worried that substituting counsel without leave of court could be used on the eve of trial and delay the proceedings. The committee thought adding language allowing the court to veto a substitution or to only allow a substitution without leave of court an adequate number of days before a contested hearing so as not to delay the proceedings.

Sheri Danz noted that the rule, as proposed, does not include procedures for GALs and the committee discussed including express language indicating that the rule applied only to all non-GAL counsel. The committee also discussed incorporating GAL requirements into the rule. Sheri and Ruchi will confer to integrate GALs into the rule.

The committee examined subsection (b) (multiple representation). Ruchi stated that the CJD on RPC will include a prohibition on multi-respondent representation. General consensus was that multiple party representation is covered by the ethics rules and there is no need for a separate rule here. Committee members pointed out that sometimes two respondents may share one private counsel. Because this happens, the committee felt that a tip-off that this issue can arise and where to find the associated requirements may be a good idea in a comment. For example, it may be appropriate for the court to confirm that counsel has advised clients on potential conflicts and the clients have waived any conflict.

The committee was dissatisfied with subsection (d) (termination of representation) because it does not provide any examples of when termination of representation ends.

The committee preferred the approach taken by Crim. P. 44(e), which provides a list of when the proceedings end and counsel's representation is terminated. The committee acknowledged that there are multiple ways the proceedings end in D&N cases and different rules, CJD, and statutes may implicate counsel's obligations. *See* C.A.R. 3.4(b)(4) (obligating trial counsel to file a notice of appeal or ensure a notice of appeal is filed by different counsel); *but see* § 19-1-104(6)(obligating party with whom the child resides to certify the D&N case's APR order to the district court where the child resides). But the committee asked Ruchi to try to list the ways the proceedings (& representation) ends. This may include a residual clause that says the proceedings (& representation) ends "as otherwise ordered by the court."

2. Rule 2.3 Emergency Orders.

Tabled until next meeting.

3. Contempt

Traci Engdol-Fruhworth and Pam Wakefield reviewed the statute and rule and found no need for changes. In their experience, contempt has been used for recalcitrant parents and, in the past, for children who had run away from a placement or in truancy actions. Committee members indicated that it is not a best practice to use contempt against children. Committee members could only think of one recent use of contempt against for children. In those instances, contempt was used as a tool to avoid a situation involving trafficking and was done with the juveniles' consent. The committee considered whether to include a comment recommending that contempt never be used against children, but decided that was too pointed. However, the committee may consider a comment pointing to the Juvenile Justice and Delinquency Prevention Act (JJDP) Act, which requires states that receive funding from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to deinstitutionalize status offenders.

4. Default vs. Non-Appearing Party Rule

The committee summarized the history of this issue: committee members do not view default as a best practice and recognize many problems with its use in D&N cases. However, the committee also recognizes that some practitioners have strong views in favor of using default in D&N cases.

The chair framed the issue for today's decision-making: the committee needs to decide what procedural mechanism it should recommend to the supreme court for non-appearing respondents. Ultimately, the committee's recommendations will be published for public comment and the Supreme Court may adopt what rules it feels best.

A motion was made for the committee to adopt default as the procedure to resolve claims against non-appearing respondents. The motion was not seconded, and the motion failed.

A motion was made for the committee to adopt the proposed non-appearing/non-defending respondent procedure. A friendly amendment to the rule was accepted to delete the sentence authorizing a proffer of evidence. The committee felt this issue/process (whether an offer of proof suffices) should not be mentioned. It was felt that the issue could percolate with no suggestion in the rule on whether it's authorized or not.

The motion, with the friendly amendment, was seconded.

The motion, as amended, passed unanimously.

When the committee formally recommends a set of rules to the supreme court, the cover letter will highlight the committee's support for the non-appearing/non-defending process over default but will also note that default has supporters among some practitioners.

IV. New Business

1. Formal End to D&N case

The committee began by thinking about why a formal end to the D&N case is important and what problems would it solve: (1) provide a time when counsel completed representation; (2) provide a time after which the department must file a new petition if new allegations arise; (3) provide an opportunity to ensure that an APR order is certified into a district court DR case (members report that, in many case, this important step never happens); (4) provide a time for a formal end to a case when the child is not adopted (aged out; emancipated).

As the committee thought about these issues, members thought of many unique circumstances which ended a case and those number of circumstances weighed in favor of not making a one-fits-all rule. Committee members also felt that forming a rule may touch on substantive law rather than procedure (as with (2), above).

Committee members felt that solving the problems listed above may be best addressed through other rules. For example, when counsel has completed representation can be addressed in the counsel rule, or a rule on permanency orders may include language about certifying the APR order into a district court case. Another idea was to include a general "At the conclusion of the proceedings, the trial court shall enter a finding that permanency has been achieved for the child(ren) as indicated in these findings and order, and the court shall enter an order terminating jurisdiction and any continuing responsibility of any party or counsel in the dependency or neglect proceeding."

2. HB19-1232 (ICWA)

HB19-1232 has been sent to the governor for signature. He has thirty days, and, by its terms, it becomes effective upon signature. There has been no significant opposition to the Act, so it's anticipated that the governor will sign it. The Act is a overhaul of section 19-1-126, C.R.S. (2018). It specifically adopts the federal regulations implementing

ICWA. It also places new duties on the court and other parties. The new law defines “reason to know that a child is an Indian child” and sets out a process for the court when it “receives information that the child may have Indian heritage.” The ICWA subcommittee will take up incorporating the new law into the ICWA rules.

3. Complete Set of Draft Rules

The Complete Set of Draft Rules was distributed to the committee members. The chair noted that seeing all the rules together gave her a sense of satisfaction, and it was good to see all the work that’s been done over the last several years. She asked members to review the document and bring any issues to the attention of the committee by emailing the chair and/or J.J. She also asked for detail-oriented wordsmiths/grammar nerds to think about volunteering their time to take a close look at the rules.

The committee also discussed using comments. It was decided that comments can explain what the committee is doing and why the committee is doing it that way. Suggestions for additional comments should be emailed to the chair and/or J.J. as well.

Judge Ashby noted that this was her last meeting as chair of the committee due to her retirement at the end of the month. She expressed her gratitude for the committee’s hard work. Justice Gabriel thanked Judge Ashby for her lifetime of service on behalf of the supreme court. The committee presented Judge Ashby with a card celebrating her upcoming retirement.

Judge Welling will begin serving as chair. Judge Ashby will continue to serve on the committee as a member.

V. Adjourn Next Meeting June 21st

The Committee adjourned at 11:15 PM.

Respectfully Submitted,
J.J. Wallace

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of August 2, 2019 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:30 AM 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 Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby, Chair	X	
David P. Ayraud	X	
Magistrate Howard Bartlett		X
Jennifer Conn	X	
Sheri Danz	X	
Traci Engdol-Fruhworth	X	
Claire Collins for Judge David Furman	X	
Ruchi Kapoor	X	
Shana Kloek		X
Wendy Lewis		X
Peg Long	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
Pam Wakefield		X
Non-voting Participants		
Justice Richard Gabriel, Liaison		X
Terri Morrison	X	
J.J. Wallace		X

Attachments & Handouts:

- (1) Rule 2.1 (appointment of counsel) new draft
- (2) HB19-1232 (ICWA)
- (3) HB19-1219 (Permanency)

(4) Email on Implementation of Rules

II. Chair's Report

A. The 5/3/19 minutes were approved without amendment.

III. Old Business

A. Review of Present C.R.J.P

1. Rule 2.1 (appointment of counsel)

Ruchi Kapoor explained that the updated draft reflects the feedback at the last meeting that the rule should make clear that the provisions of the rule outlining termination of representation, withdrawal, and substitution only apply to counsel representing respondents and not to GALs. Accordingly, subsection two refers to counsel for respondents (the committee removed parent from the title because section 19-3-202, C.R.S. (2018) grants the right to counsel to parents, guardians, or legal custodians).

The committee also wants to distinguish counsel for respondents (guaranteed by the statute) from counsel for special respondents or intervenors. The committee decided that the civil rule governing entry of appearance and withdrawal, C.R.C.P. 121 § 1-1, would provide adequate procedures for counsel representing special respondents and intervenors and the draft should incorporate the rule by reference in the juvenile rule.

The committee examined the notice of withdrawal provision of the draft rule. The committee felt that subsection (V) should include a list or statement of all future court dates in addition to an advisement that the respondent is obligated to appear on those dates.

ORPC indicates that this notice provision will mostly apply to private counsel because its office usually substitutes counsel, but there are rare cases where clients run through all the county's RPCs or the client wants to appear pro se. Subsection (IV) says "[t]hat a hearing will be held," but there is no follow-up provision outlining hearing procedures in the draft rule. Committee members leaned toward only allowing withdrawal of a counsel for a respondent after a hearing and were hesitant to approve a process that does not involve a hearing and an advisement for the respondent.

Committee members explained that, when a respondent wants to fire counsel and represent themselves, the respondent is giving up an important statutory right. Committee members reiterated that most motions to withdrawal are addressed at the nearest upcoming court date, and the judge gives an *Arguello* style advisement to the respondent before granting withdrawal (if the withdrawal is at the request of the respondent). All the trial judges on the committee indicated that they never sign a withdrawal order without first giving an advisement. But, one committee member did raise the issue-what if counsel wants to withdraw and the client (parent, guardian, or legal custodian) cannot be found and advised?

Committee members felt comfortable with allowing substitution of counsel by written motion and order (without a hearing). Thus, the committee agreed that there should be a contrast between withdrawal situations (advisement of statutory right to counsel & hearing required) and substitutions (no hearing required).

The committee felt that the language of the termination of representation section should be modified to cover private counsel for respondents and should also include language making it discretionary with the court or attorney-client to continue representation.

2. Draft set of Rules

Feedback still welcome. Look at draft rules as situations arise-if an issue becomes apparent email chair & J.J.

The chair related that he was interested in working to formalize the draft. He wanted to reach out to a small group of people to go over draft; identify conflicts; make reconciliations, standardize word usage, format, structure, etc. before producing a final product for committee's approval. The committee approved of this approach.

IV. New Business

1. Other Committee News: Civil Rules Forming Magistrate Rules Subcommittee

The chair explained that the civil rules committee is in the very early stages of forming a subcommittee to look at the magistrate rules. Other than looking at some issues related to domestic relations cases, no decision has been made on whether the subcommittee will recommend a broad overhaul of all rules or whether they will recommend narrow tweaks to the rules. However, given that the juvenile rules committee has noted tension with between the juvenile magistrate statute and the C.R.M., the chair wanted to reach out to the magistrate rules subcommittee to see if they will accept input from the juvenile rules committee. Ruchi Kapoor volunteered to assist the subcommittee. Judge Ashby did as well (as permitted by her schedule-she will be out of town for some of the fall and winter). Magistrate Spangler was unable to attend the meeting today, but works as a juvenile magistrate, so the committee suggested reaching out to him to gauge his interest.

2. HB19-1232 (ICWA)

The chair spoke with Judge Furman, chair of the subcommittee on ICWA. Judge Furman was working integrating the new statute in a stand-alone rule covering ICWA (not integrating ICWA into the various rules). The chair indicated that Judge Furman would be convening the subcommittee soon.

3. HB 19-1219 (Permanency)

Judge Meinster, chair of the permanency subcommittee, indicated that the subcommittee will be reconvening to examine the impact of the new legislation on the current version of the draft rule.

4. Need for Piecemeal Adoption of the Rules

The committee roundly rejected this idea. The committee believe the rules are too interdependent and integrated and, in other contexts in juvenile, a piecemeal approach has led to problems

V. Adjourn Next Meeting October 4, 2019

The Committee adjourned at 11:05 PM.

Respectfully Submitted,
J.J. Wallace

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of October 4, 2019 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:30 AM 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 Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby, Chair	X	
David P. Ayraud		X
Magistrate Howard Bartlett		X
Jennifer Conn		X
Sheri Danz	X	
Traci Engdol-Fruhworth	X	
Judge David Furman	X	
Melissa Thompson for Ruchi Kapoor	X	
Shana Kloek		X
Wendy Lewis	X	
Peg Long		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
Pam Wakefield		X
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Attachments & Handouts:

- (1) Rule 2.1 (appointment of counsel) new draft
- (2) New Draft of Permanency Hearing Rule & Notice
- (3) New Permanency Hearing Statute

(4) 2020 Meeting Schedule

II. Chair's Report

- A. The 8/2/19 minutes were approved with one correction: on page 2, second paragraph from the bottom, "ORCP" should be "ORPC."
- B. The chair is still working on forming an editing group.
- C. The chair will reach out to Magistrate Timms, chair of the magistrate rules subcommittee (out of the civil rules committee) to offer a juvenile perspective on the magistrate rules. Justice Gabriel added that he is the liaison justice for the civil rules committee and, at the last civil rules meeting, he reminded the civil rules committee that they should reach out to the other rules committees in revising the magistrate rules.
- D. The chair announced that, at the next meeting, the committee will take up issues raised as feedback to the whole rules document. If any other members have feedback, please get it to J.J. in the next couple of weeks to include in for the next meeting.

III. Old Business

A. Review of Present C.R.J.P

1. Rule 2.1 (appointment of counsel)

Ruchi Kapoor was out of town, so Melissa Thompson from ORPC attended the meeting in her place. In preparing for the meeting, she noted that, more and more, jurisdictions are using Family First (FFPSA) and DANSR funds, to authorize the appointment of counsel before a petition is filed. *See also* § 19-3-202, C.R.S. She wanted the committee's input as to whether the current version of the rule includes that scenario. The committee felt that adding a comment noting that nothing in the rule limits pre-petition appointment of counsel would address the issue. Sheri Danz added that the same is true for GALs, *see* section 19-3-203, C.R.S., so the comment included reference to GALs as well.

The committee also commented on the absence of procedures for advising respondents or appointing counsel for respondents who are in-custody. They automatically qualify for counsel, but some courts require them to fill out paperwork and send it in before appointing counsel. Other courts only require the incarcerated respondent to request counsel before appointing counsel. Some automatically appoint. Uniformity around the procedures for appointing counsel for incarcerated respondents may be beneficial and ORPC will suggest some language to address this.

Melissa also mentioned that, occasionally, ORPC has to substitute counsel for unusual reasons (death, suspension, contract expired, etc.) and the CJD authorizes ORPC to do so. Thus, today's version of the draft includes procedures for ORPC substitutions.

One committee member mentioned that RPC have more procedural avenues for appointment than other kinds of counsel. To offer more clarity, the committee suggested moving the reference to appointment by ORPC from (a)(1) to (b) (which is the more

specific section aimed at appointing counsel for respondents) and to add a comment that (b) does not supplant (a), but merely provides additional procedures.

The committee also amended (b)(3)(D) to substitute “Hearing” for “Leave of Court” to make it clear that the court must approve a substitution, but it can do it without a hearing. The timing of the court’s order was also modified to start to run from the date of notification.

The committee also expressed general concern about all the rules and whether the committee has been specific enough or consistent enough in referencing the different kinds of attorneys that may be participating (and what the rules are calling them: GAL, attorney, counsel, respondent parent counsel, etc) and been consistent with any definitions already in section 19-1-103. Sheri volunteered to read the rules with an eye towards this issue. The possibility of a definition section in the front of the rules to specify the roles will be kept in mind.

2. Draft set of Rules-Feedback (from David Ayraud)
Tabled to next meeting to wait for more feedback.

IV. New Business

1. New Draft of Permanency Rule

Judge Meinster and Professor Robinson explained the updates made to the draft rule to conform to the amended permanency statute. Not much changed in the notice.

The committee suggested modifying (d)(2)(D) to reflect that children can direct the GAL not to share their wishes with the court.

The committee also discussed a perceived ambiguity in the statute as to whether section 19-3-702(4)(b)(I)–(II) applies only to OPPLA children or youths or to all children or youths. The committee believed from its context that it applies only to OPPLA children and youths.

The committee also considered how deferred adjudications fit within the amended statutory procedures for permanency and explained that the amendments did not change the statute’s silence on permanency hearings for out-of-home children under deferred adjudications or informal adjustments (the permanency hearing is triggered by a disposition, which does not formally occur in a deferred adjudication or informal adjustment). Committee members felt the current comment [1] conflicted with the statute by requiring the court to have a permanency hearing within 3 months of the deferred adjudication or informal adjustment. Thus, the comment was amended noting that the statute doesn’t trigger a permanency hearing for these children and advising the court to address permanency in the shortest time possible for these children.

Related to this issue, committee members realized that (h) of the Continued (Deferred) Adjudication Rule also conflicts with the permanency statute (this will be addressed at next meeting).

Committee members also related that the General Assembly is ramping up implementation of the Family First Prevention Services Act (FFPSA). Many committee members are involved in various discussions on this topic, and they anticipate changes coming down the pike that may need to be reflected in the rules. Anticipating this, Sheri Danz, Judge Meinster, Judge Furman, and Ruchi Kapoor volunteered to keep an eye on the issue. If a subcommittee is formed, the committee also recommended Jennifer Mullenbach,(Jeffco County Attorney) for the subcommittee.

2. 2020 Meeting Calendar

The 2020 meeting schedule was emailed on 10/3/2019. No one on the committee noticed any obvious conflicts at this time.

V. Adjourn Next Meeting December 6, 2019

The Committee adjourned at 10:50 AM.

*Respectfully Submitted,
J.J. Wallace*

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of February 7, 2020 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 AM 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 Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby, Chair		X
David P. Ayraud	X	
Magistrate Howard Bartlett		X
Jennifer Conn		
Sheri Danz	X	
Traci Engdol-Fruhworth		X
Judge David Furman		X
Ruchi Kapoor	X	
Andi Truett for Shana Kloek	X	
Wendy Lewis	X	
Peg Long	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
Pam Wakefield		X
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Attachments & Handouts:

- (1) Excel Sheet of Feedback with Attachments A & B; Emails from David and Trent
- (2) Email from Peg and CASA perspective
- (3) JV E-filing

(4) 1/21/20 version of draft rules (emailed)

II. Chair's Report

A. The 10/4/19 minutes were approved without amendment.

III. Old Business

A. General Corrections to the Set of Draft Rules

1. Continued (Deferred) Adjudications: (h) conflicts with § 19-3-702(1)(a)

The committee decided to delete (h) and add a comment which refers to the federal funding statute.

1.1 Continued (Deferred) Adjudications: (f)

The committee agreed to remove the brackets from “dismiss the case” and ensure the rule includes dismissal as an option.

1.2 Continued (Deferred) Adjudications: clarify (d), (f), and/or (4)

The committee deleted “or upon finding additional circumstances exist that are or would be injurious to the welfare of the child” from (d) leaving it so that terms and conditions may be amended by agreement of the parties. Related to this, the committee also deleted (f)(4), which addressed hearings. The committee recognized that a situation could arise where one party wants to amend the terms and conditions and another party objects to the amendment. If this situation arises, the committee was confident that the court could figure out how to proceed. Thus, the committee agreed that the rules need not address this specific situation.

The committee also wondered whether (f)(3) was supported by case law. David Ayraud believed it was and offered to find the case.

1.3 Continued (Deferred) Adjudications: (f)(1) “whether the respondent has failed to comply with the terms and conditions” is potentially misleading?

Tabled to next meeting. The committee discussed whether (1) and (2) should be combined to clarify that compliance is not the sole measure of the Continued (Deferred) Adjudication. David Ayraud related that the procedures were set out in two steps to highlight that there are two steps and adjudication is not just based on noncompliance. A combined version will be provided for the next meeting for comparison.

2. Authorizing the Filing of a Petition: two options in current draft

The committee decided to go with the first option, which says that the court need not hold a hearing but does not forbid holding a hearing. The committee felt that this option gave the court the most flexibility.

3. Pre-trial motions: (a)(1) duty to confer has two options

The committee decided to go with the second option, which matches the language of C.R.C.P. 121 § 1-15(8).

One committee member point out that the duty to confer is in two places in the draft. The committee also recognized that the current draft contains repetition of rules. When each substantive area subcommittee drafted their proposal, each subcommittee considered areas of overlap such as motions, service, conferral, etc. The committee would like the drafting subcommittee to look for repetition, point out the repetition, and make recommendations for ensuring a unified whole.

3.1 Pre-trial motions: (d) service of motion is empty

The committee chose to delete (d) because service is covered in the next rule (Reports, Filings, and Other Pleadings). To highlight that part of the rule, the committee added “service” to the title.

3.2 Pre-trial motions: should service of term motions be treated differently from other motions?

The committee recognized that the termination motion statute, section 19-3-602(2), C.R.S., covers advisement and service of a termination motion. However, the committee felt a catch-all “unless otherwise provided by law” to the service of motions requirement would be useful and insulate the rule from changes in the statute. Saying “unless otherwise provided by law” is sufficiently broad to cover any future changes, so the rule will not have to be changed any time a statute is changed.

As related issue, the committee noted that the statutes on termination, part 6 of title 19, article 3, provide more procedural details than other statutes (requirements for motion, advisement, affidavits, timing of termination motion, etc.). As a result, the rules do not focus on termination proceedings. But this contrasts sharply with the tremendously detailed information outlining adjudication process and may leaving users wondering why the sharp difference. The committee suggested that the drafting committee keep an eye on this issue and make a recommendation to achieve a harmonious product.

Also relatedly, the committee discussed the value of repeating the statute in the rules. The committee determined that the drafting committee will be charged with highlighting when a rule repeats a statute, so that the committee can determine the value of doing so in each instance.

3.3 Pre-trial motions: (a) & Responsive Pleadings and Motions (f) or (g)?

The language referenced tracks C.R.C.P. 121 § 1-15(3). On balance, the committee felt that “may” gives the court discretion to act (or not act) and outweighs any ambiguity the parties may face in making tactical decisions about responding or not responding.

4. Responsive Pleadings and Motions: general rule or only adjudication?

For now, the committee leaves the draft as-is. As discussed by the committee in item (III)(A)(3), the committee refers this issue to the drafting committee. The committee would like the drafting subcommittee to look for repetition, point out the repetition, and make recommendations for paring down the repetition ensuring a unified whole.

4.1 Responsive Pleadings and Motions: (a) by adding con't adjudication to this section, are we extending the timeframe for denying jurisdictional matters longer than we intended?

The committee clarified the language of (a): Jurisdictional matters of age and residence of the child shall be deemed admitted unless specifically denied by a party in writing or orally on the record prior to the adjudicatory hearing, admission under Rule 4.2.3, or *the approval of the terms and conditions of a continued (deferred) adjudication under Rule 4.2.5, whichever occurs first.*

4.2 Responsive Pleadings and Motions: (e) Do we want to more explicitly state that court has the discretion to shorten these timeframes?

The committee explained that (e) is drafted as if the juvenile rules are adopting all of C.R.C.P. 121 § 1-15 for application in the juvenile rules and (e) sets out the modifications to the civil rule, which includes modifying response times. The committee decided to add "unless otherwise ordered by the court" to the default 14-day response time. The committee added a verb (may) to the section on replies. The committee also discussed whether to authorize motions to reconsider interlocutory orders (as the civil rule does). The committee felt that such motions are uncommon in D&N proceedings. And, to the extent that they are filed, they are generally magistrate reviews covered by the magistrate statute. The committee felt that interlocutory motions to reconsider should not be authorized.

5. Trial by Jury: (d) peremptory challenges

The committee has two goals it would like to achieve in the new (1) set out the peremptory challenges per side and (2) allow the court discretion in determining the allocation of peremptory challenges to achieve fairness. The committee would also like to address perceived unfairness in the present rule, which gives the GAL separate peremptory challenge (so, whichever side the GAL agrees with gets twice as many peremptory challenges as the opposing side). GAL committee members related that the rule was intended to buttress the GAL role as an independent party, but recognized that, in practice, it can seem unfair. Several proposals will be drafted and presented at the next meeting.

6. Form Release: length release is active

The committee felt that a two-year release, given that the release contains a blank revocation that may be exercised at any time, would be more helpful. The committee acknowledge that releases are the subject to many state and federal laws and regulations and that expertise in these applicable laws to review the release would be helpful. Terri Morrison, legal counsel for the branch, related that the probation department was currently developing a release and facing similar issues. She indicated that probation was working with the attorney general's office to identify a person with that kind of expertise to review its release. She will let the committee know if a person with expertise is identified who could provide the committee with a similar review.

7. Discovery: (c) Are GALs exempt from discovery only or discovery and disclosures?

Tabled until next meeting.

7.1 Disclosures: (f) requires "upon written request"

Tabled until next meeting.

7.2 Discovery: want to make sure we are not changing practice standards

Tabled until next meeting.

8. Order to Interview or Examine Child: should there be something for a response?

Tabled until next meeting.

8.1 Order to Interview or Examine Child: supported by affidavit (rather than form of affidavit)

Tabled until next meeting.

9. Temporary Custody (c): make consistent with Discovery (e)(2)

Tabled until next meeting.

9.1 Discovery(e)(2): make consistent with Temporary Custody (c)

Tabled until next meeting.

9.2 Temporary Custody: Much of this language is already in statute and some of the language contradicts existing statute. For example, 19-3-405(2)(a) uses the language "danger to the child's life or health in the reasonably foreseeable future." If we are going to repeat statutory language, we need to compare this to 19-3-405 and 19-3-403 to make sure that we are consistent.

Tabled until next meeting.

10. Emergency Protection Orders: (d) doesn't say what happens if department doesn't ask to continue the order

Tabled until next meeting.

11. Adjudication of Non-Appearing or Non-Defending Respondent: (a) "in person or through counsel may be unclear"

Tabled until next meeting.

11.1 Adjudication on Non-Appearing or Non-Defending Respondent: (b) Given some of the recent caselaw regarding offers of proof, we just want to make sure we are not creating appealable issues with this procedure of adjudication based on motion and affidavit.

Tabled until next meeting.

IV. New Business

1. CASA in Rules-Tabled to next meeting. At the next meeting, the committee will take up this agenda item first.

2. JV E-filing. The Judicial Department's IT division plans to begin rolling out JV e-filing in April or May. The initial roll-out will be document management only (the clerk's office will be able to upload documents to create an electronic record). It will be court-use only and will not initially allow outside access. IT's goal is have full JV e-filing in FY 2021.

V. Adjourn-Next Meeting April 24, 2020

The Committee adjourned at 11:45 AM.

Respectfully Submitted,
J.J. Wallace

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of April 24, 2020 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby, Chair	X	
David P. Ayraud	X	
Magistrate Howard Bartlett		X
Jennifer Conn	X	
Cara Nord (for Sheri Danz)	X	
Traci Engdol-Fruhworth	X	
Judge David Furman		X
Ruchi Kapoor	X	
Shana Kloek		X
Wendy Lewis	X	
Peg Long	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	
Pam Wakefield	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Attachments & Handouts:

(1) Draft Minutes of 2/7/20 Meeting

I. Call to Order

II. Chair's Report

A. The 2/7/2020 meeting minutes were approved by the committee.

B. Quick Catch Up & Planning for Future (including additional emergency rules)

Judge Welling recapped the process for the recent emergency rule change to C.R.J.P. 3.5. He indicated that the suggestion came from someone who noticed a gap in the juvenile rules after the criminal rule changed. The chair thanked everyone on the committee for acting quickly.

Justice Gabriel also thanked the committee for their work on the rule change and explained that the supreme court has been working on several emergency rule changes in different contexts. He emphasized that the court is open to any needed rule change, so if anyone has suggestions, please reach out. Contact JJ, Judge Welling, or Justice Gabriel if other concerns present themselves that can be solved by rule.

Judge Welling opened the floor. He wanted to hear from committee members about the new world we are all working in.

Judge Meinster related that things have changed, but hearings are getting done, people are being cooperative, patient and, somehow, it's working. She feels that some of the new things we are doing will forever change the practice. She urges the committee to think about the draft rules we've worked on in light of what is going on now and how things have changed because she believes that some of the changes have been very helpful and would like to see those practices continue.

Cara Nord stated that OCR has put together a [COVID resource page](#), which compiles a wide variety of resources and is open for anyone to use. She also stated that OCR has been concerned about blanket orders issued in some jurisdictions (stopping all hearings or all visitations) and prefers access to the courts (even if it's just a phone hearing or videoconference) and case by case inquiry into what is best for a specific family. Cara also reported that, in El Paso County, parents' participation rates during video services is much higher than prior rates of in-person services. Several other committee members echoed that virtual family services has increased participation substantially.

Peg Long from CASA also reported that CASAs are having more frequent virtual contact with children – shorter, but more frequent. She noted that 50% of kids were in their homes. She too reported that family engagement in services were up. She also felt like virtual visiting was a new tool that CASAs will continue to use.

John Thirkell added that Douglas County is using video conferencing as well (for court, for visitation, etc.). He stated that there have been a couple of demands for live court hearings. Overall, he believed that counties should approach child welfare cases reasonably. For example, there may be due process concerns about filing a

termination motion at this time, so a reasonable course would be not to file those motions right now.

Jennifer Conn said that Adams County has not done webex videoconferencing yet, but they are having court hearings over the phone, which seems to work. She's also noticed that it's easier to have more frequent contact with clients using a variety of apps that she's recently started using.

Professor Colene Robinson indicated that the law school has adapted to the new environment. Because many students are no longer able to work in their summer job, the clinic will continue over the summer and will be offering coverage for GALs and RPCs. Other legal services organizations have reached out to the clinic due to high demand, so the clinic will also be taking on protection order and eviction cases. She also noted that Boulder is not currently doing any hearings other than shelter hearings, but they are doing written pleas, so cases are able to stay moving. She said that law students are mostly worried over the bar exam and whether it will be postponed.

Pam Wakefield stated that, because of her illness, she's been using remote and virtual options for a while, so not much has changed for her. She agrees that it is easier to get a hold of clients virtually. New filings have diminished – likely due to lack of interaction with mandatory reporters. Caseworkers are going to houses with masks, which helps Pam do FaceTime with children who do not have smartphones. Staffings have occurred virtually and, overall, participation has been great.

Ruchi Kapoor related that continuing visits is an important issue for ORPC. ORPC is concerned about the impact of lack of visits on TPR filings. She also reports problems with the record in virtual proceedings-delays and pauses lead to people to talk over one another and it's hard to identify who is speaking. ORPC has worked on a tip sheet for ensuring that the record is clear and audible. Justice Gabriel recommend raising a hand before talking to deal with the pauses. Judge Welling recommended, when people talk over one another, acting to clarify the record in real time. John Thirkell returned to reasonableness and feels like it would be unreasonable to rest a termination motion on lack of visits when visits have been prohibited because of current circumstances.

Terri Morrison indicated that SCAO, the courts, and IT are working together to train judges and court staff on using webex for court hearings. There have been some difficulties because many courts are down to skeleton staffs. Also, obtaining PPE and cleaning supplies for staff and the public coming to in-person court dates to comply with local and state public health orders has been an issue for the

courts. She also expects the court will be challenged with the same budget issues facing all other governments.

Judge Slade echoed other members' observations that everyone is pulling together and working as a team to solve issues and keep cases moving constructively. She stated that Douglas County is having difficulties getting video pleas in delinquency cases--the jail doesn't have the technology that the court uses, and she hasn't been able to locate a spare judicial laptop to give to the jail for juvenile pleas. The district attorney feels that telephone pleas are not authorized under Crim. P. 43. Thus, this is one area where there has been no resolution and cases are stalled. A committee member from OCR and Judge Meinster, offered to work with Judge Slade on the issue.

Traci Engdol-Fruhworth noted that some parents are able to participate in services virtually, but others are not. She worries that two months without progress is a lot in an EPP case, but the lack of progress is due to circumstances beyond the control of the parents. Committee members noted that a "spirit of reasonableness" is important in working on D&N cases at this particular moment.

On this note, Judge Meinster believed that, at this time, the definition of "reasonable efforts" may be different than what it was two months ago. She also has seen early adoption of services that will be valuable under "Families First." She is co-chair of the Juvenile Institute this July; they are in the planning stage and will go forward with some version of the institute. If committee members have ideas for sessions, please email her.

Magistrate Spangler related that the 8th JD hasn't issued blanket orders on visitation, services, etc.-they are addressing issues on a case-by-case basis. They are holding shelter hearings in person, but other hearings are through webex. Even for shelter hearings, they are doing a pre-hearing webex among the parties to see if they can work things out or if they truly need a hearing. He's finding a good spirit of cooperation among all the parties. Parties are being reasonable and judicious in filing motions. He has also observed that participation is up – 85% by his account. Many providers are doing virtual services and this has really increased participation. He noted the only problem area seems to be getting mandatory forms back.

Judge Ashby is enjoying her retirement and has time available; she's very impressed by the work everyone is doing. If anyone needs someone to be a touchstone and talk an issue through, she is available, and offers her support by phone and email. Feel free to reach out to her.

The chair related that it was helpful to share and hear what is going on. He offers kudos to everyone for working well as a team and making sure that child welfare

cases are able to move forward in some form. He also reminded members that, if any issues surface, he's willing to form a subset of this group to address any COVID-19 related issues.

III. Old Business (tabled until next meeting)

- A. CASA in Rules? Peg Long
- B. Reviewing Current Rules-See spreadsheet

IV. New Business (tabled until next meeting)

- V. Adjourn-Next Meeting June 26, 2020, 9:00 AM, 3rd floor Court of Appeals Conference Room (public health circumstances permitting)**

The Committee adjourned at 9:55 AM.

Respectfully Submitted,
J.J. Wallace

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of June 26, 2020 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby, Chair		X
David P. Ayraud	X	
Magistrate Howard Bartlett		X
Jennifer Conn	X	
Sheri Danz	X	
Traci Engdol-Fruhworth	X	
Judge David Furman	X	
Ruchi Kapoor	X	
Shana Kloek	X	
Wendy Lewis		X
Peg Long	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	
Pam Wakefield	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Special Guests: Jenny Bender from CASA; Clancy Johnson, SA from 1st JD

Attachments & Handouts:

- (1) Draft Minutes of 4/24/20 Meeting**
- (2) Emails from Peg Long Re CASA in Rules**
- (3) Excel Sheet of Issues with Draft Rules**
- (4) Judge Slade's Email**
- (5) C.R.J.P. 3.7 Materials**

I. Call to Order

II. Chair's Report

A. The 4/24/2020 meeting minutes were approved by the committee.

III. Old Business

A. CASA in Rules? Peg Long

Peg Long pointed out that the current draft rules are silent on CASA volunteers. She noted that CASA operates by MOU with each individual jurisdiction and that procedures can vary throughout the state, but CASA is most effective when appointed at the earliest stage of the proceedings. Jenny Bender, Executive Director of CASA, was also present and related that CASA operates in 18 of 22 judicial districts and has served over 4500 children. Peg Long provided all the statutory references to CASA and the amendments made in HB19-1219. The committee discussed whether to repeat parts of the statute on appointing case in a rule. As with other issues, the committee goes back and forth on this. Judge Furman suggested trying to mention CASA appointments as part of the procedures (for example, combined with the rule on filing a petition, so “At time of filing the petition, the court must appoint a CASA if feasible.”). Pam Wakefield mentioned that CASAs are appointed in several different case types and wondered about whether a CASA rule should be a general provision (applicable in all Children’s Code cases) or whether we should have a D&N-specific CASA rule. The committee decided to focus on D&N for now.

The chair broke the issue down into two parts: (1) should we mention CASA in the rules; and (2) if so, what would be the proposed language.

David Ayraud noted that other case participants, GALs, special respondents, intervenors, etc. are mentioned in the rules and it would be strange to only exclude CASAs. The committee thought this was a good point and decided to draft proposed language. Peg Long, Judge Welling, and Judge Meinster will volunteer to draft a proposal. If anyone else is interested in helping, email J.J.

B. Reviewing Current Rules-See spreadsheet

The draft rules excel sheet was tabled. The chair is going to ponder a good way to facilitate discussion via webex.

IV. New Business

A. Judge Slade’s Email Re Adjudicatory Trials

Judge Slade noted that she has now continued adjudicatory jury trials twice and will soon be doing it for the third time. Finding good cause is not as problematic as the consequences of leaving cases unresolved for long periods:

- (1) Kids remaining out of home without an adjudication is troubling;
- (2) Parents are entitled to a jury trial on the issues, and children are also entitled to have resolution;
- (3) Cases remain pending with no treatment plan or services in place in the absence of an agreement;
- (4) Though some jurisdictions can get waivers or variances from the Chief Justice to start jury trials, D&N cases are tough because there are more lawyers and parties than in a standard case and there is not enough room in a standard courtroom to accommodate the number of people.

Judge Slade reported 3 delayed cases in Douglas; Shana Kloek reported 4-6 in Arapahoe; Judge Meinster reported 13 in Jefferson.

On treatment issues, the court can enter a protective order, but the court has limited powers to do so. Committee members expressed concern that the law does not authorize the court to rely on its emergency powers for such long periods of time. Sheri Danz mentioned CJD 96-08 and also related that DANSR had discussed this issue and came up with a model protective order. She will find it, send it to J.J. and J.J. will email it to the committee.

John Thirkell indicated that chief justice directive may be a way to offer guidance. The committee recognized that these were serious issues worthy of attention. Judge Furman suggested putting the issue on CIP's agenda and inviting Judge Slade to the CIP meeting. The committee agreed that CIP is a good home to brainstorm solutions. The committee is open to make any rule changes to assist if CIP comes up with creative solutions. The committee tabled the agenda item to see what happens at the CIP meeting.

B. Judge Meinster's email Re C.R.J.P. 3.7; Materials by Clancy Johnson

The committee agreed that, as of July 1, the C.R.J.P. will be in conflict with the statute due to the Juvenile Justice Reform Act, SB19-108. Judge Furman pointed out that the law is clear in dealing with this situation—the statute controls over a conflicting rule. The question is whether the committee should act to amend the rule, and if so, what the amendment should look like. Professor Robinson expressed concern over changing a delinquency rule. She said that the current charge to the committee was to overhaul the D&N rules. She worried that, by making this change, it would appear that the committee has been regularly reviewing the delinquency rules and has signed off on all of them—that would be a false impression. Judge Slade felt reluctant to make changes to the delinquency rules without input from DAs and PDs and other delinquency stakeholders. That said, the committee was troubled by letting the conflict between the rule and statute persist. Sheri Danz recommended reaching out to the Juvenile Justice Committee. It meets the last Tuesday of the month. She will email the contacts for that committee so that Judge Welling, Clancy Johnson, and J.J. Wallace coordinate with them. The committee made three suggestions for amending the rule: (1) deleting (h) entirely;

(2) adding a reference to article 2 of title 19 to (h); or

(3) delete (h) and add findings language to (g) with a cross-reference to the statutes. These proposals will be referred to the Juvenile Justice Committee for input.

- C. Ruchi Kapoor asked about the drafting subgroup. Judge Welling will work on it. Ruchi Kapoor, Judge Furman, Justice Gabriel, Sheri Danz, and Clancy Johnson volunteered.

V. Adjourn-Next Meeting August 7, 2020, 9:00 AM,

The Committee adjourned at approximately 10:40 A.M.

Respectfully Submitted,
J.J. Wallace

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of August 7, 2020 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 A.M. via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby, Chair		X
David P. Ayraud	X	
Magistrate Howard Bartlett		X
Jennifer Conn		X
Sheri Danz		X
Traci Engdol-Fruhworth	X	
Judge David Furman	X	
Ruchi Kapoor	X	
Shana Kloek	X	
Wendy Lewis		X
Peg Long	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
Pam Wakefield	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Special Guests: Jenny Bender from Colorado CASA

Attachments & Handouts:

- (1) Draft Minutes of 6/26/20 Meeting**
- (2) Proposed Rule Re CASA**
- (3) Two memos from the Access to Justice Committee with a proposed new advisement rule**
- (4) Proposed Rules Re ICWA**

I. Call to Order

II. Chair's Report

A. The 6/26/2020 meeting minutes were approved by the committee.

III. Old Business

A. CASA in Rules?

Judge Welling recapped the CASA group's discussion. The group zeroed in on three areas that would be useful to place in the rule: early appointment; access to information; and reference to local MOUs, which control CASAs' role within the jurisdiction. The group looked at CASA rules from several other states. Some were highly detailed, some very general. The group felt a more general approach would be best because CASA programs are individualized within each judicial district.

The group also felt that the rule should be placed early within the rules to emphasize CASA consideration early in the case. The committee agreed that the CASA rule should be placed in the general provisions section just after counsel of record.

Ruchi Kapoor pointed out that the language of the access to information provision is not the same language used in the access to information statute, section 19-1-210. The CASA group pulled the language from a different statute, section 19-1-206(2). David Ayraud related that the language may also bump up against language in section 19-1-307 regarding information in dependency and neglect cases. Given the several statutes in play, the committee felt it best to delete the access to information provision in (b) and include a reference only to "access to information" in (c), which already references the CASA statutes and local MOUs.

The committee deleted the reference in (a) to "written" order and instead just left it as "order" to align with the statute, section 19-1-206, which does not specify written orders. Instead, the usefulness of a written order for a CASA will be noted in a comment.

The committee will table voting on the CASA rule until the next meeting, so that members can reach out to stakeholders and have time to think about it.

B. Adjudicatory Jury Trials (referred to CIP)

Judge Slade has not received any information from CIP. The issue has been referred to the CIP committee, but the committee has not yet met to discuss it.

C. C.R.J.P. 3.7 & SB19-108 (referred to Juvenile Justice Committee)

Clancy Johnson and J.J. Wallace put together four rule proposals consistent with the committee's notes at the last meeting to send to the Juvenile Justice Committee for feedback. No feedback has been provided. J.J. Wallace will follow up with the Juvenile Justice Committee.

IV. New Business

A. Rule Proposal from the Access to Justice Committee Re Interlocutory Appeal Advisement-Judge Welling

Judge Welling and Justice Gabriel provided background on this issue. The Access to Justice Committee has referred a rule proposal to this committee regarding advisement of the right to appeal under section 19-1-109(2)(c) in light of the recently announced *A.R. v. D.R.* 2020 CO 10, ¶ 43. The committee thought that an advisement of the right to appeal at that stage, as a general matter, was a good idea. The committee recommending forming a subgroup to explore the idea further. Ruchi Kapoor, Judge Meinster, Terri Morrison, and David Ayraud volunteered to be part of the group. J.J. Wallace will provide support. If anyone else would like to volunteer email Judge Welling or J.J. Justice Gabriel offered to let Justice Hart (liaison justice to the Access to Justice Committee) know the steps the committee has taken in response to their proposal.

B. Proposed ICWA Rules

Judge Furman began by thanking all the subcommittee members and interns who worked on the draft. He stated that the subcommittee's goal was to strike a balance. Rules should point to the important federal and state ICWA laws but not restate all of them. The committee felt that the proposal struck the right balance: highlighting essential ICWA requirements for all cases and pointing the direction to where to go for more detailed requirements needed in an exceptional case.

In discussing the "Application" proposed rule, Judge Furman noted that the subcommittee drafted the rules thinking about D&N cases, but the subcommittee discussed how these requirements apply in other kinds of cases involving children: APR, adoption & relinquishment, etc. The subcommittee left for the committee to decide whether to place these rules in the dependency and neglect section of the juvenile rules or to place them in the general provisions of the juvenile rules so that they are applicable in all kinds of cases. The committee felt they should be in a general provisions section (or even a special ICWA section up front with general provisions) that notes its applicability to all case types. Judge Furman said that the subcommittee will reexamine the application section in light of this decision.

In going through the rules, Judge Furman highlighted some of the subcommittee's thoughts. He noted that, since inquiry applies in all cases, there is more specificity in the inquiry rule, and it's a little longer. Notice is next, and the purpose of the rule is to verify information provided in inquiry. The intervention rule purposely avoids any indication as to whether a tribe must be represented by an attorney. The subcommittee acknowledged that many tribes cannot afford to hire counsel but felt that the issue is one for attorney regulation not one for these rules. The transfer rule parrots what the subcommittee felt were the most important (though not all) parts of the regulations and statutes. It does not go into "good cause" or the right to counsel; instead, the

rule provides citations to where that information can be found. Similarly, the qualified expert witness (“QEW”) rule doesn’t include seeking assistance from the tribe or that the regular social worker cannot serve as the QEW. But again, citations are provided.

Peg Long had a suggestion for the active efforts rule. The definition in 25 C.F.R. § 23.2 is a whole paragraph, but she suggested referencing the first sentence in the comment to give a sense of what active efforts look like (i.e., more than reasonable efforts) and then have the citation to the full definition. The committee was in favor of adding the sentence to the comment.

In the placement preference rule, the committee wanted more information from the subcommittee on (c) (“In the case of a voluntary foster care placement requiring court approval, the court shall give weight to a parent’s request for anonymity in applying the preferences.”) The committee had difficulty envisioning a situation where this would apply and would like an example. Ruchi Kapoor also probed whether “parent” was ambiguous: does this mean natural parent or foster parent?

Judge Furman said he would take the proposal back to the subcommittee for fine tuning with the committee’s comments in mind. He asked for any other comments. One committee member thought it would be a good idea for committee members to think about the proposal and how these rules will work for the next couple of months—more comments may be forthcoming after sitting with the draft for a while.

The committee will take up the proposal at the next meeting and may vote on it at that time.

C. Magistrate Spangler Announces Retirement

Magistrate Spangler announced that he is retiring, and this will be his last committee meeting. Judge Welling thanked him for his service to the committee. Justice Gabriel also thanked Magistrate Spangler, on behalf of the supreme court, for his years of service not only to the committee, but to the branch as a whole.

D. Editorial Board Handover

Judge Welling asked for a volunteer to lead up the editorial board efforts to edit the rules draft. Judge Furman volunteered and will now lead the effort. J.J. Wallace will email Judge Furman the names of people who have volunteered or been nominated to serve.

V. **Adjourn-Next Meeting October 2, 2020, 9:00 A.M.**

The Committee adjourned at approximately 11 A.M.

Respectfully Submitted,
J.J. Wallace

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of October 2, 2020 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 A.M. via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby, Chair		X
David P. Ayraud	X	
Howard Bartlett		X
Jennifer Conn		X
Sheri Danz	X	
Traci Engdol-Fruhworth		X
Judge David Furman	X	
Ruchi Kapoor	X	
Shana Kloek AND Andi Truett	X	
Wendy Lewis		X
Peg Long	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	
John Thirkell	X	
Pam Wakefield	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison		X
J.J. Wallace	X	

Attachments & Handouts:

- (1) Draft Minutes of 8/7/20 Meeting
- (2) Proposed Rule Re CASA
- (3) Revised Proposed Advisement Rule (after disposition) & Clean Version of the Rule with section 19-1-109, C.R.S. (2020)

I. Call to Order

- A. The Chair called the meeting to order shortly after 9 AM.

II. Chair's Report

A. The 8/7/2020 meeting minutes were approved by the committee.

III. Old Business

A. CASA Rule Proposal Final Vote

The committee amended the language of the comment. The committee voted unanimously to approve the draft rule proposal as amended and include it with the other approved rules.

B. Adjudicatory Jury Trials (referred to CIP)

Judge Slade indicated that any issues have been resolved because courts are doing trials again and nothing further is needed from the committee.

C. C.R.J.P. 3.7 & SB19-108 (referred to Juvenile Justice Committee)

Judge Walker forwarded the potential rule amendments to members of his committee and they will be providing feedback via email. The feedback will be gathered and presented in the meeting materials for the next meeting

D. Rule Proposal from the Access to Justice Committee Re Interlocutory Appeal Advisement (Judge Meinster, David Ayraud, Ruchi Kapoor, Terri Morrison)

The group explained that it met and reviewed the proposal from the Access to Justice Committee. The group used the proposal as a starting place for drafting a rule focusing on advising parties of their appellate rights after disposition, although it was acknowledged that some of those rights are less than clear. The draft focuses on advising on (1) the right to appeal after disposition; (2) expedited deadlines; (3) failure to appeal may result in waiver of claims; (4) right to counsel; and (5) where to find more information.

A committee member noted that a court can issue several dispositional orders over the course of a case. The committee agreed that the right to appeal is attached to the initial dispositional order and recommended the rule only require an advisement at the initial dispositional order.

A committee member pointed out that only respondents have the right to appointed counsel through ORPC, not parties generally. Relatedly, which case participants or parties can appeal is not 100% clear and that makes providing a specific advisement difficult. The committee amended the proposal to say "indigent parties may have the right to assistance of appointed counsel."

The committee also agreed that the last section (on where to find more information) should be in the passive voice.

After making these changes, the committee debated whether it should proceed with an advisement rule. On the one hand, under the statute, an adjudicatory order is appealable, this is a unique statutory right, and providing an advisement is laudable. On the other hand, crafting an appropriate advisement given the ambiguities about the rights involved is difficult, and the

advisement ends up not being very specific (e.g. “there are expedited deadlines” and “you may waive claims if not appealed now” and “you may have a right to counsel”). There is also some concern that if there is a rule requiring an advisement and the court does not advise the parties, this creates rights (and related appealable issues) that otherwise would not exist. The committee is reluctant to create substantive rights and believes that those kinds of decisions should be left to the legislature.

The Chair suggested that we table the discussion until the next meeting. He asks the committee members, in the interim, to weigh the potential benefit of advisement against the risk of creating new problems. At the next meeting, the committee can decide whether to continue to draft an advisement rule or not.

E. ICWA Rules (tabled)

Judge Furman related that the ICWA subcommittee would be meeting soon to discuss the committee’s feedback from the last meeting. An update on the subcommittee’s progress will be provided at the next meeting.

IV. New Business

A. None

V. Adjourn-Next Meeting December 4, 2020, 9:00 A.M.

(Subsequently postponed to February 5, 2021)

The Committee adjourned at approximately 11 A.M.

Respectfully Submitted,
J.J. Wallace

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of February 5, 2021**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby, Chair	X	
David P. Ayraud	X	
Howard Bartlett		X
Jennifer Conn	X	
Sheri Danz	X	
Traci Engdol-Fruhirth	X	
Judge David Furman	X	
Melanie Jordan	X	
Ruchi Kapoor		X
Shana Kloek AND Andi Truett	X	
Wendy Lewis	X	
Peg Long	X	
Judge Ann Meinster	X	
Chief Judge Mick O'Hara		X
Trent Palmer		X
Professor Colene Robinson	X	
Magistrate Fran Simonet		X
Judge Traci Slade	X	
John Thirkell	X	
Pam Wakefield		X
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Guest: Shannon Smerker, juvenile unit supervisor from the 18th JD

Meeting Materials:

- (1) Feedback from Juvenile Justice Stakeholders re: C.R.J.P. 3.7**
- (2) Advisement Rule re: section 19-1-109(2)(c), C.R.S. (2020)**

II. Chair's Report

- a. Approval of the 10/2/2020 meeting minutes
The minutes were approved without amendment.
- b. New Member Welcome-Melanie Jordan
The chair recognized a new committee member, Melanie Jordan from ORPC, who introduced herself. Current committee members then introduced themselves.
- c. Membership Renewals
Many members' terms are expiring at the end of March. The chair explained that members with expiring terms will receive an email. He asked members to reply to the email to confirm their willingness to renew.

III. Old Business

- a. C.R.J.P. 3.7 & SB19-108
Not much feedback was received and the feedback that was received did not reach a consensus favoring a particular proposal. Comments indicated that the proposals set out in pages 10–12 of the meeting materials accurately convey the changes and are meritorious.

Two members related that the legislature is likely to reorganize article 2 of title 19 this year, which will impact any reference to a particular statute in the rule.

One member favored the proposal at page 11 of the meeting materials, which modifies (h), deletes the last sentence (which is now in conflict with the statutes), and alerts courts and parties that orders must conform to the three statutes impacting juvenile detention. He felt it struck the right balance of alerting folks that there are detention hearing requirements that they should be following and where to look for those requirements. Another member agreed it was a happy medium. One member expressed concern over the details that can be involved in temporary orders for custody under section 19-1-115, C.R.S. (2020). On the whole, the committee felt that the proposal at page 11 broadly encompasses the many changes brought by Juvenile Justice Reform without going into very specific details of the reform.

A member moved to approve the proposal at page 11 of the meeting materials. The motion was seconded. The motion carried unanimously.

The chair will draft a letter to the supreme court with the committee's recommendation. Justice Gabriel explained the process the court will take to review the recommendation and suggested the letter to the court include: Need for rule change; Process the committee used to proposed the change; Why the particular change is recommended; and Recommendation on when the rule change should be effective.

b. Rule Proposal from Access to Justice Committee re Interlocutory Appeal Advisement

David Ayraud recapped the history of this agenda item and the committee's past discussion of the pros (providing an advisement of rights is good) and cons (worry over the details of the advisement and worry over creating substantive rights). Justice Gabriel added that the committee took up the issue at the direction of the Access to Justice Committee, who were in turn prompted by *A.R. v. D.R.*, 20 CO 10 (stating that "subject to limited exceptions, the failure to file a timely notice of appeal from the adjudication will generally result in the dismissal of an appeal of the adjudication order").

One example of an advisement rule (not required by statute) is the advisement required by magistrates under C.R.M. 7(a) and 7(b). The committee felt that was not a very helpful example because magistrate cases are divided into two paths (consent required/no consent required), which impacts the process to seek review.

The committee considered removing "the court shall" and replacing it with "the court should," making the rule suggest that advising is a good idea, but not requiring it to avoid making a substantive right. The committee also discussed, if the advisement wasn't required, putting it in a comment as a best practice. Some members felt that the rules should either direct the court to a requirement or not mention it.

The member from ORPC sees value in requiring an advisement because, right now, we are relying on RPC to make the advisement, and if RPC is ineffective, no advisement is made (as was the case in *A.R.*).

The member from OCR sees a lot of difficulties in hammering out the details of a one-size-fits-all advisement (e.g. what kind of advisement is required for an absentee parent) and fears that requiring an advisement sets out substantive rights, which will be raised at the dispositional stage and will delay permanency for children. Other members agree that gaming out an appropriate advisement will be difficult.

In the present rules, there is a brief appeal advisement in C.R.J.P. 4.2(a)(10) ("any party has the right to appeal any final decision made by the court"). But the committee is not convinced that "any party" has a right to appeal and feels that the phrase "any final decision" is not very clear.

Given the difficulties, a member made a motion to abandon trying to draft an advisement rule.

In discussing the motion to abandon the effort, several members (Melanie Jordan, Sheri Danz, John Thirkell, David Ayraud, Judge Furman, and Judge Ashby) volunteered to take another look at drafting an advisement rule, keeping in mind all of the issues raised by the committee. A recommendation was made to include Polly Brock, clerk of the court of appeals, in the discussion. The motion to abandon was withdrawn, and the committee agreed to table the discussion until the next meeting.

c. Proposed ICWA Rules

Judge Furman provided an update on ICWA rules. The subcommittee has joined forces with a group from court services to review the ICWA draft rules. The joint meeting will take place on 2/26. John Thirkell express interest in assisting the effort and was invited to join the meeting.

IV. New Business

a. Committee Membership Make up

Given that the committee continues to receive feedback on all the juvenile rules, and right now, the committee is comprised of mostly D&N stakeholders, the chair asked if the committee should expand to include other stakeholders and asked for suggestions from the committee. Most committee members felt expanding was a good idea and recommended probation/pretrial service, district attorneys, and public defenders. The chair will accept recommendations from committee members on how to expand membership to other stakeholders.

b. Pending legislation to reorganize Article 2 of Title 19

Sheri Danz is on the committee working with the legislature to reorganize article 2 of title 19. She stated that there is a larger goal to align the statutes with juvenile development, but for now, they are focused on reorganizing. She explained that there will not be any substantive changes; the changes are aimed at reordering the statutes to follow the flow of a juvenile delinquency case. She also indicated that the statutes are being amended to conform to the rule of seven.

V. Adjourn

Next meeting, April 23, 2021 at 9 AM.

Respectfully Submitted,

J.J. Wallace

Staff Attorney, Colorado Supreme Court

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of April 23, 2021**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby, Chair		X
David P. Ayraud	X	
Jennifer Conn	X	
Sheri Danz	X	
Traci Engdol-Fruhirth	X	
Judge David Furman		X
Melanie Jordan	X	
Ruchi Kapoor		X
Peg Long	X	
Judge Ann Meinster		X
Chief Judge Mick O'Hara		X
Trent Palmer		X
Professor Colene Robinson		X
Magistrate Fran Simonet		X
Judge Traci Slade	X	
John Thirkell	X	
Pam Wakefield	X	
Abby Young	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Meeting Materials:

- (1) Draft minutes from 2.5.2021 meeting

II. Chair's Report

- a. The 2/5/2021 meeting minutes were approved without amendment.

- b. New Member Welcome-Abby Young
The chair recognized a new committee member Abby Young, Clerk of Court for Denver Juvenile, who introduced herself. Current committee members then introduced themselves.

III. Old Business

- a. Rule Proposal from Access to Justice Committee re Interlocutory Appeal Advisement
Committee members who were able to stay on after the meeting discussed a potential advisement rule.
- b. Proposed ICWA Rules
Justice Gabriel, John Thirkell, and J.J. Wallace, who are all involved in the ICWA rules effort with CIP, gave a brief update on the progress of the ICWA rules. The group is being very thorough and making progress
- c. Committee membership makeup
Members suggested names of delinquency stakeholders who would be good additions to the committee. J.J. Wallace will compile a list of the names with emails and the chair will reach out to those individuals to gauge interest.
- d. Pending Reorganization of Article 2, Title 19
Sheri Danz related that the bill appears to be proceeding smoothly through the legislature and that it should be headed to the governor fairly soon. The chair suggested forming a group to go over the bill to see if it impacts any rules. Sheri suggested that the formation of the group wait until after we add delinquency stakeholders.

IV. New Business

NONE

V. Adjourn

Next meeting, June 11, 2021 at 9 AM.

Respectfully Submitted,

J.J. Wallace

Staff Attorney, Colorado Supreme Court

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of June 11, 2021**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby, Chair	X	
David P. Ayraud		X
Jennifer Conn	X	
Sheri Danz	X	
Traci Engdol-Fruhworth	X	
Judge David Furman	X	
Melanie Jordan	X	
Ruchi Kapoor	X	
Peg Long	X	
Clancy Johnson for Judge Ann Meinster	X	
Chief Judge Mick O'Hara		X
Trent Palmer		X
Professor Colene Robinson	X	
Magistrate Fran Simonet		X
Judge Traci Slade		X
John Thirkell	X	
Pam Wakefield	X	
Abby Young	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Meeting Materials:

- (1) Draft minutes from 4.23.2021 meeting**
- (2) Three versions of interlocutory advisement**
- (3) Supplementary materials from Sheri Danz Re HB21-1094 (via email)**

II. Chair's Report

- A. The 4/23/21 meeting minutes were approved without amendment.

III. Old Business

- A. Rule Proposal from Access to Justice Committee re Interlocutory Appeal Advise ment

The chair suggests first discussing whether the committee believes we should move forward with a rule on advise ment (not a specific rule—just the concept). After discussion, the committee voted. Ten members were in favor of moving forward with a rule. Members who did not vote in favor abstained and no member voted against moving forward.

The committee then discussed the particulars of an advise ment rule. The chair noted that the committee should make decisions in three areas:

- (1) **What should court do/say in advise ment?** Outline the specific things that parties must be advised of.
- (2) **How should the court do the advise ment?** The committee discussed requiring a written advise ment on an adjudication or dispositional order; an oral advise ment; or a form advise ment incorporated into an appendix to the rules as a JDF. The committee seemed to favor some form of written advise ment, although it was mindful that, if a written advise ment is required on an order, then by implication the rule requires a written order.
- (3) **And timing of advise ment?** A suggestion was made to include the advise ment in C.R.J.P. 4.2 at the initial hearing. Others favored requiring the advise ment after adjudication or disposition. It was also noted that it does not have to be one or the other-- that the court can advise at beginning but then also do it later.

After discussion, the committee decided to form a subcommittee to work on the issue and make recommendations to the larger committee. Melanie Jordan was selected to lead the group. Sheri Danz, Clancy Johnson, and David Ayraud offered to help. Abby Young offered to put the subcommittee in touch with Denver juvenile magistrates, and a suggestion was made to reach out to a rural juvenile judge or magistrate to get their perspective.

- B. Proposed ICWA Rules

Judge Furman reports that the group “is making progress.” Justice Gabriel adds that Judge Furman is being modest, and the group is doing really thoughtful work.

- C. Committee membership makeup

The chair reports we received many recommendations and will come back to the group with some more concrete recommendations on what the committee make-up should be. Email Judge Welling or J.J. Wallace if you have more suggestions.

D. Pending Reorganization of Article 2, Title 19

Sheri Danz let the committee know that she and Clancy Johnson are on a committee to produce summary materials on the reorganization and will share that info with this committee. It's still anticipated that, once juvenile justice stakeholders are added to the committee, a subcommittee will be formed to examine the new legislation to see if rules changes are needed.

IV. New Business

A. How to Conduct Future Meetings

The Colorado Judicial Center lifts its restrictions on in-person meetings after June. The conference rooms in the building do not have videoconferencing capabilities, so the technology available for people to participate remotely is the same as before the pandemic: telephone conference call and adobe connect link to view a computer screen. The committee held a brief discussion about meeting in person and decided to hold the August 6th meeting via Webex. If in-person meetings are scheduled in the future, committee members would like to be informed of restrictions/safety protocols ahead of time.

B. HB21-1094

Sheri Danz explained that the legislature has developed a new Article 7 case type, Foster Youth in Transition. There are two ways for youth to come into this case type. First, D&N cases will end no later than when the youth is 18½ and the youth will transition into the Foster Youth in Transition case type. Second, youth who have left foster care after age 16 can come back into services through the new case type. Sheri Danz anticipates the new case type may need rules setting out procedures for this new case type.

The committee agrees that that putting together a subcommittee to look at the new legislation and to make recommendation for rules is warranted. Sheri Danz will to lead the group. Clancy Johnson and Peg Long volunteered to assist her. Committee members also suggested reaching out to Jennifer Mullenbach, Jeffco Attorney and/or John Thirkell, Dougco Attorney and Gretchen and/or Kristin from CDHS. Also, former magistrate Kent Spangler.

V. Adjourn

Next meeting, August 6, 2021 at 9 AM via Webex.

Respectfully Submitted,

J.J. Wallace
Staff Attorney, Colorado Supreme Court

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of August 6, 2021**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby, Chair	X	
David P. Ayraud	X	
Jennifer Conn		X
Chris Henderson for Sheri Danz	X	
Traci Engdol-Fruhirth		X
Judge David Furman	X	
Melanie Jordan	X	
Ruchi Kapoor		X
Peg Long		X
Judge Ann Meinster	X	
Chief Judge Mick O'Hara		X
Trent Palmer		X
Professor Colene Robinson		X
Magistrate Fran Simonet		X
Judge Traci Slade		X
John Thirkell	X	
Pam Wakefield	X	
Abby Young	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	
Guest: Clancy Johnson		

Meeting Materials:

- (1) Draft minutes from 6.11.2021 meeting
- (2) Report on HB21-1094 from Sheri Danz
- (3) Judge Furman's email re: bench cards

II. Chair's Report

- A. The 6/11/21 meeting minutes were approved without amendment.

III. Old Business

- A. Rule Proposal from Access to Justice Committee re Interlocutory Appeal Advisement

Melanie Jordan reports that she secured the participation of a diverse group of stakeholders, and they will soon be holding their first meeting.

- B. Proposed ICWA Rules

Judge Furman reports that the group continues to make progress.

- C. Committee membership makeup

Judge Welling reports that the list of JD stakeholders has been compiled (thanks to everyone for their suggestions), and he will be reaching out to them soon.

- D. Pending Reorganization of Article 2, Title 19

Clancy Johnson reports that she is on a committee producing summary materials on the reorganization and will share that info with this committee. Feedback on the materials would be appreciated. It's still anticipated that, once juvenile justice stakeholders are added to the committee, a subcommittee will be formed to examine the new legislation to see if rules changes are needed. It was noted that several delinquency rules in the 3 series of the C.R.J.P. refer to statutes in article 2, so it's anticipated that they will need to be updated (*see* C.R.C.P. 3; 3.1; 3.5; 3.7).

- E. HB21-1094

Written report and recommendations provided in the meeting materials by Sheri Danz. The report indicates that neither ICWA nor the UCCJEA are implicated in the new case type. The report also indicates that the new case type may impact the permanency rule. Judge Meinster agreed to look at the permanency rule in light of the new case type.

Bench cards for HB21-1094

Kristin Melton at CIP has a workgroup on HB 1094 that are meeting to develop bench cards.

IV. New Business

- A. Drafting Committee (Judge Furman)-

A committee has been formed and will hold it's first meeting in September.

B. Future Meetings.

Judge Welling indicated that, for the foreseeable future, he believed the committee should continue to meet remotely via Webex. No committee member objected to continuing to meet via Webex.

C. Adjourn

Next meeting, October 8, 2021 at 9 AM via Webex.

Respectfully Submitted,

J.J. Wallace

Staff Attorney, Colorado Supreme Court

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of October 8, 2021**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby, Chair	X	
David P. Ayraud	X	
Jennifer Conn	X	
Sheri Danz	X	
Traci Engdol-Fruhirth	X	
Judge David Furman		X
Melanie Jordan	X	
Ruchi Kapoor	X	
Peg Long	X	
Judge Ann Meinster	X	
Chief Judge Mick O'Hara		X
Trent Palmer		X
Professor Colene Robinson		X
Magistrate Fran Simonet		X
Judge Traci Slade	X	
John Thirkell		X
Pam Wakefield	X	
Abby Young		X
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	
Guest: Clancy Johnson		

Meeting Materials:

- (1) Draft minutes from 8.6.2021 meeting
- (2) Email from Melanie Jordan and HB21-1101

II. Chair's Report

- A. The 8/6/21 meeting minutes were approved with one correction to the attendance.

III. Old Business

- A. Rule Proposal from Access to Justice Committee re Interlocutory Appeal Advisement

Melanie Jordan reports that she spoke with several individuals about the issues with an advisory rule. She asks some direction from the committee for her group. First, she was thinking about looking at other state rules. Second, she's gathered advisement forms from around the state and wanted to know if a uniform advisement form would be helpful.

The committee has gone back and forth about whether it should adopt an advisement rule and the hope was to get a proposal with the absolute best effort at crafting language.

Melanie relates that the stumbling block in coming up with a comprehensive advisement rule is how to properly advise non-appearing parents (particularly noncustodial parents who have not been found). Some worry that, by creating a blanket advisement even for the non-appearing, additional rights may be created. That said, no one wants to create a disincentive to tracking down missing parents (committee members agreed that the best practice would be to encourage due diligence in locating missing parents).

Since the stumbling block is non-appearing parents, the committee directed the advisement rule group not to focus on non-appearing parties and instead focus on parents who appeared.

- B. Proposed ICWA Rules

Justice Gabriel reports that the group continues to make excellent progress.

- C. Committee membership makeup

Judge Welling reports that he would like to add Judges, a Magistrate, an ICWA expert, DAs, PDs, ADCs, and County Attorneys to the committee. He has begun reaching out to individuals to explain how the committee works, time commitments, etc. to gauge interest. David Ayraud volunteered to send out a notice on the county attorney list serve. Committee members also made several recommendations.

Judge Welling also indicated that he would like to tell potential members that we will continue to use Webex for most meetings in order to make it convenient for stakeholders across the state to participate. No committee member expressed an objection to continuing to use Webex.

D. Pending Reorganization of Article 2, Title 19

The reorganization is now effective. Committee members have found the materials provided by Clancy Johnson very helpful, particularly the crosswalk document, which assists in locating the new statutes. J.J. Wallace will email the documents to everyone again. Committee members expressed that there were a lot of resources out there to help people navigate juvenile justice reforms, but there's no central location to find them. A committee member suggested asking CIP to focus more on juvenile justice issues. Judge Meinster and Judge Furman are co-chairs of CIP. Judge Meinster indicated that she would speak with Judge Furman about it. She also indicated that juvenile justice issues are appearing with greater frequency in CIP meetings because D&N and delinquency populations cross-over (and because Family First treats the populations the same). Members were encouraged to provide the materials to anyone who could use them.

E. HB21-1094

Judge Meinster related that, after examining the present draft of the permanency rule, any update is wait and see. Jurisdictions are just starting to implement the statutory framework and they want to see how it works. Clancy reported that over 200 advisement hearings in D&N cases have been set and there are already over 100 YT cases filed.

F. Drafting Committee

Justice Gabriel reported that the committee has met and is making slow, thorough progress

IV. New Business

A. HB 21-1101

Melanie Jordan indicated that rules related to adoption and the new open adoption scheme may be helpful and asked the committee to consider forming a subcommittee to look at the issue. She reported that there had been some confusion of the role of counties in the new scheme. David Ayraud offered to find a county attorney from his office to participate if the committee undertakes looking at new rules.

B. Records

Justice Gabriel related that the court is asking committees to think about committee record retention. All official records like agendas, meeting materials, minutes, and rosters are up on the [website](#).

V. Adjourn

Next meeting, December 10, 2021 at 9 AM via Webex.

Respectfully Submitted,

*J.J. Wallace
Staff Attorney, Colorado Supreme Court*

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of February 4, 2022**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order just after 9 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby	X	
David P. Ayraud		X
Jennifer Conn	X	
Traci Engdol-Fruhworth	X	
Judge David Furman	X	
Melanie Jordan	X	
Ruchi Kapoor		X
Magistrate Randall Lococo	X	
Judge Priscilla J. Loew	X	
Clancy Johnson for Judge Ann Meinster	X	
Chief Judge Mick O'Hara		X
Trent Palmer		X
Josefina Raphael-Milliner	X	
Professor Colene Robinson	X	
Magistrate Fran Simonet		X
Judge Traci Slade	X	
Anna Ulrich	X	
Pam Wakefield	X	
Abby Young		X
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Meeting Materials:

- (1) Draft minutes from 10.8.2021 meeting
- (2) [Guidelines for Drafting and Editing Court Rules](#)
- (3) Email from Melanie Jordan and HB21-1101

II. Chair's Report

- A. The 10/8/21 meeting minutes were approved without amendment.
- B. New Member Welcome: Anna Ulrich, Judge Loew, Magistrate Lococo & Josefina Raphael-Milliner

The new members introduced themselves to the committee and the current committee members introduced themselves to the new members.

III. Old Business

- A. Committee Membership Make-up

The Chair reports that two new members (Judge Loew and Magistrate Lococo) have been added to the committee in addition to the two new members who took the place of previous members (Anna Ulrich from OCR replacing Sheri Danz; Josefina Raphael-Milliner from CASA replacing Peg Long).

- B. Rule Proposal from Access to Justice Committee re Interlocutory Appeal Advisement

Melanie Jordan reports that she will reconvene the group looking at an advisement rule, which includes Anna Ulrich from OCR, and hopes to have a concrete proposal soon. The matter was then tabled until the next meeting.

- C. Drafting Committee

Judge Furman reports that the drafting subcommittee has been going over the draft rules. As part of that work, the subcommittee has found it useful to utilize *Guidelines for Drafting and Editing Court Rules* by Bryan A. Garner to help with consistency in making all the rules, authored by various subcommittees, have a uniform voice. The subcommittee would like the full-committee's approval for (1) utilizing the *Guidelines* as a general matter; and (2) as recommended in the *Guidelines*, avoiding using "shall" and defaulting to "must" in most circumstances, unless another word is more appropriate in context. The subcommittee's consistent usage list looks like this:

- Use must instead of shall as a default. May substitute will, should, or may if the context requires another word.
 - ✓ Must = is required to (default in most circumstances)
 - ✓ Must not = is required not to
 - ✓ May = has discretion to; is permitted to; has a right to
 - ✓ Is entitled to = has a right to
 - ✓ Will = (expresses a future contingency)
 - ✓ Should = (denotes a directory provision)

From [Guidelines for Drafting and Editing Court Rules p. 43](#) (or 29 as printed on the page)

- ✓ Under section 2-4-401(13.7), “shall” means that a *person* (person can mean entity-like government) has a *duty*.
- Use “juvenile court” instead of “trial court” or “court” but if used more than once in the same section, use “court” instead of repeating “juvenile court” over and over.
- Respondent is a consistent term for “respondent parent, guardian, or legal custodian”

What to do with Latin (italicize and whether to use Latin or plain language)-TBD

The committee’s attention was drawn to section 2-4-401(13.7), C.R.S. (2021), which provides a definition for “shall” for statutes. Some committee members expressed concern that they didn’t want to see a conflict between rules and statutes in the use of “shall” and asked the drafting subcommittee to keep the statutory definition in mind when examining each “shall.” The committee also discussed how the federal rules committees had moved away from “shall” and Colorado’s rules committees for appellate and civil rules were doing likewise. Some committee members felt that the move by other state rules committees to avoid “shall” weighed in favor of taking that approach to promote consistency among all the rules committees.

A motion was made and seconded to approve the subcommittee’s choice to avoid shall and substitute must or another word, if appropriate. The subcommittee will also keep in mind the statutory definition of shall. The motion carried unanimously.

A motion was also made and seconded to approve the subcommittee’s use of the *Guidelines* as a tool to assist the drafting subcommittee. Subcommittee members have found it a helpful starting place to draft clear rules. Judge Furman specifically mentioned using the *Guidelines*’ recommendation to break up rules into smaller portions so that only one idea appears in each section. He offered that tips like this provide structure and guidance to the subcommittee’s work. The committee unanimously approved the subcommittee using the *Guidelines*.

A committee member asked if there was a projected date that the subcommittee will finish its work. Judge Furman indicated that the subcommittee was still in the early stages of its work and there’s no projected completion date yet, but the committee is moving faster each meeting.

D. Proposed ICWA Rules

Judge Furman reports that the ICWA subcommittee is almost finished with its work. The subcommittee has been through the rules once to complete a draft, and he anticipates going over it one more time. He expects the second review to go quickly, unless a member raises an issue that needs more thorough review. He stated that the subcommittee views these rules as a subset of the Juveniles Rules (though, he notes that the rules were drafted to incorporate non-Children’s Code case types like probate and domestic relations). Because ICWA is most intensely applicable to juvenile case types, the subcommittee feels it’s the appropriate home. Justice Gabriel provided some historical context on the issue: the committee had considered making the ICWA committee its own standing committee but decided against that approach for efficiency (because a standing committee requires a separate order from the Chief, a separate charge, separate staffing, etc.). Judge Furman also mentioned that there are certiorari cases before the U.S. Supreme Court, which may impact ICWA and that it may be appropriate to keep an ad hoc version of the ICWA subcommittee around.

IV. New Business

A. Records Policy

Justice Gabriel noted that this arose because a chair retired from a different rules committee and left boxes of committee documents to be managed by the library, which caused the court to reflect on where this information goes and who oversees it. The court also would like a better understanding of what records it has (and where they are) in case there is a public information request. And committee records can be important in future cases where interpretation of a rule is at issue. The committee agreed to set up a subcommittee to look at the issue and develop a policy. Judge Welling, J.J. Wallace, Clancy Johnson, Judge Meinster, and Terri Morrison volunteered for the subcommittee. Justice Gabriel mentioned that the civil rules committee is also looking at the issue and that Judge Jones is coordinating that effort. Judge Welling indicated that he will reach out to Judge Jones, so as to avoid duplicating efforts.

B. Responsibility of the Committee Moving Forward—taking on other areas of the juvenile rules—formalized vision for the future

The chair noted that the committee had previously discussed looking at rules for other kinds of juvenile cases (not just D&N cases). The chair asked committee members to list the things rules may need to cover in the near-term future:

- 1) Reorganization of Article 2, Title 19
 - [SB21-059](#) Signed effective October 1, 2021.

- The committee noted that any cross-reference to title 19, article 2 in the C.R.J.P. would need to be updated. *See* C.R.J.P. 2.2 (a); 3(a); 3.1(a); 3.5(a) & 3.7(a)–(g).
 - The committee also noted that the detention hearing standard of C.R.J.P. 3.7 needs updating to conform with the Juvenile Justice Reform Act.
- 2) [HB 21-1101](#) Open Adoptions
- Melanie Jordan from ORPC initially received many questions about procedural issues related to the new open adoption scheme. Questions have died down recently, but she is uncertain if the procedural kinks have been worked out or if she’s just not hearing about the issues. The committee briefly touched on this issue at a previous meeting and decided to wait to act for (1) new committee members and (2) time to go by so that some cases can go through the process, which should shed light on what needs clarification by rule. Traci Engdol-Fruhworth explained that she just got her first case (in Arapahoe County) touching on this issue and she will be happy to provide feedback about the process.
- 3) New OCR Legislation on client-directed representation for children over 12 ([HB22-1038](#)). Portions of this bill may impact Youth in Transition (YT) cases, in addition to D&N cases. The bill provides that children with diminished capacity may qualify for a GAL in addition to counsel. There seems to be some questions about how a court determines diminished capacity.
- a. Related to this issue: There are also questions about the role of a GAL when there is also counsel: what does the GAL do? Is the GAL a party?, etc. Many committee members say this is also an issue for adults who have GALs. A committee member indicated that [People in Interest of T.M.S., 2019 COA 136](#) and [In re Marriage of Sorensen, 166 P.3d 254 \(Colo. App. 2007\)](#) offer some guidance, but there are still many questions.
- 4) Youth in Transition Cases—a clean-up bill will be introduced, which may need to be reviewed by the committee. The bill on client-directed representation also amends some statutes related to YT cases, which may need review.
- 5) Josefina Raphael-Milliner, from CASA, indicated that CASA is running a clean-up bill to make sure that it’s clear that “youth” qualify for CASA services. She indicated that it has not been the practice to remove CASAs from cases once a child turns 18, but the bill will clarify this.

- 6) The chair indicated that, given the proliferation of legislation in juvenile cases, it may make sense to have a standing legislative subcommittee to keep an eye on legislation so that the committee can more nimbly respond to changes.
- 7) After the meeting, a member emailed that it may be a good idea for the committee to look at rules around using Webex for hearings.

Given all these issues, a consensus was reached to form a subcommittee to analyze these issues, prioritize them, and make recommendations on what the committee should focus on in the future. One committee member suggested looking at the order with the committee's charge for guidance. The chair, Anna Ulrich, Josefina Raphael-Milliner, Judge Loew, Melanie Jordan, Clancy Johnson all volunteered to work on this subcommittee, which Judge Welling will chair.

V. Adjourn

Next meeting, April 1, 2022 at 9 AM via Webex.

Respectfully Submitted,

*J.J. Wallace
Staff Attorney, Colorado Supreme Court*

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of April 1, 2022**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order just after 9 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby	X	
David P. Ayraud	X	
Jennifer Conn	X	
Traci Engdol-Fruhworth		X
Judge David Furman		X
Ruchi Kapoor	X	
Magistrate Randall Lococo	X	
Judge Priscilla J. Loew	X	
Judge Ann Gail Meinster	X	
Chief Judge Mick O'Hara		X
Trent Palmer		X
Josefina Raphael-Milliner		X
Professor Colene Robinson		X
Zaven "Z" Saroyan	X	
Magistrate Fran Simonet		X
Judge Traci Slade		X
Anna Ulrich	X	
Pam Wakefield	X	
Abby Young	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison		X
J.J. Wallace	X	
Special Guests: Clancy Johnson & Jennifer Mullenbach		

Meeting Materials:

- (1) Draft minutes from 4.1.2022 meeting
- (2) Notes from Record Policy Subcommittee Meeting

II. Chair's Report

- A. The 2/4/22 meeting minutes were approved without amendment.
- B. ORPC Member Substitution. The chair welcomed Zaven Saroyan. He is replacing Melanie Jordan as the ORCP representative.

III. Old Business

- A. Rule Proposal from Access to Justice Committee re Interlocutory Appeal Advisement

Z Saroyan indicated that this project was recently handed to him. He understands that there's an ad hoc group formed. He will get the group together and provide an update at the next meeting.

- B. Drafting Subcommittee

Judge Welling explained that he is substituting as chair of the committee for Judge Furman while Judge Furman is out. The next meeting has been rescheduled to April 7th.

Jennifer Mullenbach, member of the Drafting Subcommittee, appeared as a representative of the subcommittee to ask the full committee to approve drafting revised language for the Attorney rule. Right now, the rule has respondent counsel's representation ending "when a mandate issues." But the subcommittee noted that a mandate may issue resolving an appeal of an adjudication while the case is ongoing. CRJP committee agrees that the idea is to terminate representation at the true end of the representation. Stated another way, the subcommittee is free to draft language that makes sure counsel is terminated only when there are no outstanding unresolved issues for the respondent. One committee member cautioned to be careful if using language excluding the adjudication appeal because there can be some question how a disposition fits within that type of appeal.

- C. Proposed ICWA Rules

Justice Gabriel explained that he would be substituting for Judge Furman as temporary chair of the ICWA subcommittee. The next meeting is April 29th. He indicated that the subcommittee continues to make good progress, he feels the group is fairly close to finishing its work.

Judge Welling also added that the U.S. Supreme Court has granted certiorari review of several ICWA cases out of the Fifth Circuit. Justice Gabriel stated related that the subcommittee, as a group, has an amazing amount of expertise in the area and is keeping close tabs on what's happening in the Supreme Court.

D. Records Policy

By way of background, Judge Welling explained that each of the supreme court's rules committees was tasked with examining its records by the court. The idea was for each committee to think about the records it has and what it should keep going forward. He informed everyone that he spoke with Judge Jones (who was heading the effort for the Civil Rules Committee and who is chair of the P.A.I.R.R. committee). The Records subcommittee met and notes from the meeting were provided in the meeting materials.

Justice Gabriel then explained that he has undertaken a unified effort to come up with a single, consistent record policy for all the committees. He indicated that most committees have fairly consistent public records: agendas, minutes, draft rules, correspondence to the supreme court proposing rule changes, and public comments. Going forward he envisions these records should be kept digitally and uniformly for all committees. As for older records being kept in dozens of boxes in the library, he believes these will be gone through and the records mentioned above will be kept, but any extraneous materials will be discarded. He indicated there is nothing at present for the subcommittee to do, but he will let the subcommittee know if their assistance is needed and keep the committee updated on the process.

E. Vision Subcommittee

Judge Welling explained that the subcommittee had set two meetings over the lunch hour in the last week of April. The subcommittee will work to prioritize issues before the committee and examine what the future of the committee looks like. Because of its importance for the committee, everyone is welcome to attend the meetings. If you are interested in attending, email him or J.J. Wallace and a Webex meeting invite will be sent to you. Judge Ashby indicated that she would like to be included.

IV. New Business

A. Committee Member Terms Ending June 1 and Up for Renewal

The committee members with expiring terms were listed on the agenda. Please email J.J. Wallace if you are interested in renewing your term. The chair hoped everyone would renew and thanked the membership for work on the committee. Justice Gabriel then said that, in case folks do not renew and this was their last meeting, he wanted to add his personal thanks and the thanks of the court for their work on the committee. The outstanding work product of the committee cannot happen without everyone's contribution.

V. Adjourn

Next meeting, June 3, 2022 at 9 AM via Webex.

Respectfully Submitted,

J.J. Wallace

Staff Attorney, Colorado Supreme Court

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of June 3, 2022**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order just after 9 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby	X	
David P. Ayraud	X	
Jennifer Conn	X	
Traci Engdol-Fruhworth	X	
Judge David Furman		X
Ruchi Kapoor		X
Magistrate Randall Lococo	X	
Judge Priscilla J. Loew	X	
Judge Ann Gail Meinster	X	
Trent Palmer	X	
Josefina Raphael-Milliner	X	
Professor Colene Robinson		X
Melanie Jordan for Zaven “Z” Saroyan	X	
Judge Traci Slade	X	
Anna Ulrich	X	
Pam Wakefield	X	
Abby Young	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	
Special Guests: Judge Pax Moultrie; Clancy Johnson; Stephanie Wise		

Meeting Materials:

- (1) Draft Minutes of 4/1/2022 meeting**
- (2) Committee Reappointments Order**
- (3) Standing Committee Document Retention Policy**
- (4) Vision Subcommittee Survey**
- (5) HB22-1038 related materials**

(6) Proposal from Judge Moultrie RE Withdrawal/Termination of Provisionally Appointed RPC

II. Chair's Report

- A. The 4/1/22 meeting minutes were approved without amendment.

III. Old Business

- A. Rule Proposal from Access to Justice Committee re Interlocutory Appeal Advisement

Melanie Jordan indicates that Z has found a rural magistrate to participate in the subcommittee and that they will be meeting soon.

- B. Drafting Subcommittee

Judge Welling explains that the subcommittee continues to plug away and make good progress.

- C. Proposed ICWA Rules

Justice Gabriel indicated that the subcommittee met yesterday and continues plowing through. At the meeting yesterday, it was decided that a form for providing ICWA notice could be helpful, particularly for pro se litigant. A member of the subcommittee has volunteered to undertake drafting a proposal for the subcommittee to consider.

- D. Records Policy

Justice Gabriel explained that, rather than having each committee draft its own record policy, he took on the role of crafting a uniform policy. The policy was adopted by the court and distributed to the committees. In short, the committee will be retaining all agendas, meeting minutes, rules (proposed and adopted), correspondence between the committee and the supreme court, correspondence between the public and the committee, and public comments received in response to proposed rules.

- E. Vision Subcommittee

Judge Welling explained that, in order to get a sense of the juvenile community's needs, the subcommittee drafted a survey to send out. The subcommittee identified sending the survey stakeholder groups including: GALs; RPCs; ADCs; PDs; DAs; City/County Attorneys; Juvenile law section of the Colorado Bar Association; and judicial officers in juvenile. Committee members also suggested reaching out to: (1) the family law section of the bar because they often work as private counsel in juvenile cases; (2) Tim Eirich, who, in the past, has facilitated feedback among adoption lawyers; and (3) CASAs, who already participate in wellbeing surveys quarterly through the state office.

On the survey itself, a committee member suggested breaking out the rural and urban counties in the 4th JD and the 18th JD, so that there's a better sense of where the feedback is coming from. It was also suggested that question #5 include a * or reference to the intro material where Judge Welling explains that we are already working on sweeping changes to the D&N rules.

The committee also briefly discussed whether competency should be raised as a specific issue or whether it will come up naturally in the responses. Members seemed to think it will likely come up in the responses.

Judge Welling stated that the subcommittee will meet next week to finalize the survey. He hopes to have some feedback by the August C.R.J.P. meeting.

IV. New Business

A. HB22-1038 Right to Counsel for Youth

Anna Ulrich from OCR provided a brief summary of the legislative action changing the role of GALs for children 12 and older. The legislation goes into effect on January 9, 2023. She believes that expedited measures need to be taken to, at a minimum, tag on "Client Directed Counsel" to references to GALs in the rules. As an example, she cited C.R.J.P. 4.3 on peremptory challenges. Judge Meinster agreed that the new legislation will have broad impacts and indicated that HB22-1038 is on the agenda for lengthy discussion at both the judicial conference and for the judicial institute. Terri Morrison added that she recently attended a meeting led by Sheri Danz from OCR outlining changes to the CJD on GALs, so that is also in progress.

The committee decided to take two actions. First, the drafting subcommittee will be asked to examine the current draft rules for references to GALs so that updates reflecting client directed counsel can be added. Second, the committee decided to form a subcommittee to examine the need for expedited amendments to the current rules, which Anna will lead. Other volunteers include: Judge Meinster; Josefina Raphael-Milliner; Abby Young; Clancy Johnson & Judge Ashby. The committee recommended finding one or two trial court GALs as well (particularly one from a rural jurisdiction).

Judge Welling inquired whether it made sense to work in tandem with the group examining the CJD. Anna indicated that it may be a good idea and anticipates the rules committee doing the heavy lifting on the issue. If the rules committee recommends any changes that impact the CJD, Terri Morrison will step in to assist with shepherding the recommended changes through the CJD process.

B. Proposal from Judge Moultrie RE Withdrawal/Termination of Provisionally Appointed RPC

Judge Moultrie explained the need for a rule change to address appointment of provisional counsel. Appointing provisional counsel can be useful for finding and engaging parents, but balanced against this, there is a need not to slow cases down or keep attorneys languishing on unfruitful appointments. Judge Moultrie believes that the rules could define a provisional appointment and clarify when such appointments end. Melanie Jordan from ORPC explained that they had fairly recently modified language in the CJD to account for provisional appointments.

The committee decided to form a subcommittee to explore amending the rule on attorneys to clarify provisional appointments. Judge Moultrie will chair the committee, and Traci Engdol-Fruhworth, Zaven Saroyan, and Abby Young volunteered to work on the subcommittee. Like with the subcommittee examining Client Directed Representation, if the group finds that changes need to be made to the CJD, Terri Morrison can provide a Word version of the CJD and walk any suggested changes through the CJD amendment process.

V. Adjourn

Next meeting, August 5, 2022 at 9 AM via Webex.

Respectfully Submitted,

J.J. Wallace

Staff Attorney, Colorado Supreme Court

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of August 5, 2022**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order just after 9 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby	X	
David P. Ayraud	X	
Jennifer Conn		X
Traci Engdol-Fruhworth		X
Judge David Furman	X	
Ruchi Kapoor		X
Magistrate Randall Lococo	X	
Judge Priscilla J. Loew	X	
Judge Ann Gail Meinster	X	
Trent Palmer		X
Josefina Raphael-Milliner	X	
Professor Colene Robinson		X
Zaven "Z" Saroyan	X	
Judge Traci Slade	X	
Anna Ulrich	X	
Pam Wakefield		X
Abby Young	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	
Special Guests: Judge Pax Moultrie; Sheri Danz & Clancy Johnson		

Meeting Materials:

- (1) Draft Minutes of 6/3/2022 meeting**
- (2) Proposal from Judge Moultrie RE Withdrawal/Termination of Provisionally Appointed RPC (draft CJD 16-02 & Rule 2.1)**
- (3) HB22-1038 Right to Counsel for Youth (Summary of Changes Chart, Draft CJD 04-06 & Rule 4.3)**
- (4) Draft of Evidence Rule Section (c) from Drafting Subcommittee**

II. Chair's Report

- A. The 6/3/22 meeting minutes were approved without amendment.

III. Old Business

- A. Proposal from Judge Moultrie RE Withdrawal/Termination of Provisionally Appointed RPC & CJD 16-02

Judge Moultrie recapped the need for covering provisional appointments in the rule, the formation of the subcommittee, and their process in proposing the draft rule. She invited questions or comments on the draft.

One committee member asked how provisional appointments would be reflected in the court's database. A clerk member indicated that, when a provisional appointment is made, it is reflected in the minute order and the order of appointment is otherwise entered in the same manner as any other appointment. She related that clerks are pretty good about entering attorneys in the computer and removing them when they withdraw or their appointment ends, so she didn't think new practices would be needed to be implemented for provisional appointments.

In examining the suggested changes to CJD 16-02, committee members suggested adding language to VI(b)–(c) to note that a provisional appointment would be an exception to those requirements (for example, there's no need for a JDF 208 for a provisional appointment). The committee then discussed several other instances where the CJD's language may need to be updated to reflect that a provisional appointment has different requirements from a regular appointment. Once it was pointed out that a provisional appointment would be an exception to various requirements, the committee suggested that the subcommittee do some more wordsmithing with that point in mind and provide a new draft for the committee to review.

- B. HB22-1038 Right to Counsel for Youth

The Juvenile Rules Committee discussed what type of changes or additions would be needed to the Draft Juvenile Rules currently being worked on by the Drafting Subcommittee. It was determined that, rather than have the Drafting Subcommittee tackle the directives of HB22-1038, in addition to its complete overhaul of the juvenile rules, it made more sense for a special subcommittee to be formed to focus on changes and additions to the Draft Rules to address this legislation. The Juvenile Rules Committee also determined that, since a subcommittee had already been formed related to juvenile rules and 1038, the same subcommittee could be used as a starting point to work on the Draft Juvenile

Rules & 1038. However, it was made clear that no one on the initial 1038 Subcommittee should feel obligated to continue on with the Subcommittee since the scope of the work had significantly expanded. New members are welcome. Anna Ulrich will head the group.

The committee recommends specifically reviewing rules related to:

- 1) Early appointment of GAL/Counsel for youth;
 - 2) Emphasizing that the child is now a party;
 - 3) The child has a right to attend court; and
 - 4) Implications (if any) for discovery with the child being a party.
- 1) Update to CJD 04-06 in light of HB21-1091 (Foster Youth in Transition) & HB22-1038 (Counsel for Youth)

Sheri Danz explained that OCR views updating the CJD as an opportunity to implement the new legislation. She related that the office met with the Chief Justice, who asked OCR to reach out to stakeholders for input. She noted that the office also met with OARC because there is a lot of crossover between OCR's practice standards and the Colorado Rules of Professional responsibility, which OCR implements. OCR also reached out to judges, CASA, county attorneys, and ORPC. OCR has also examined the experiences of other states, such as New Mexico, that have made similar transition. Sheri thanked the committee for agreeing to provide input.

Sheri clarified that they are not yet in the wordsmithing stage of reviewing the CJD (although please feel free to email her with proofreading-type suggestions by August 12th). Right now, they want to check the CJD's general substance and organization to insure the new legislation is included. The CJD sets out the appointing authority, who pays, practice standards, and court oversight for their attorneys. Sheri went through the summary chart and committee members offered feedback.

Judge Welling thanked Sheri for coming to the meeting and for asking for the committee's input and for her thoughtful work implementing the new legislation.

- 2) Rule 4.3

Anna Ulrich recapped that, at the last meeting, the committee noted that C.R.J.P. 4.3 would need to be clarified to reflect the new role of counsel for children 12+ in place of the GAL role. The proposed rule adds the new role and rephrases the how the peremptory challenges are allocated to make clear that they are allocated to the three groups (who must share the allocation within the group): 1)

petitioner; 2) respondents; and 3) the children. The committee added some punctuation for clarity by replacing the commas between each group name with semicolons and also added parentheticals around “through their guardian ad litem or counsel for youth.” The committee also added “all” before the children to clearly indicate that all the children must share peremptory challenges.

While the committee was considering the rule it was noted that section (a) says that the court can demand a jury trial, which struck the committee as awkward phrasing since the court usually orders, not demands. Since the committee was already recommending a change to the rule, the committee also recommended removing the court from the list of those that may “demand” a jury trial and add “or the court, on its on motion, may order a jury trial” after the list of those who may demand a jury trial. The committee also changed the next sentence to add “or ordered” after “demanded” to be consistent with the new version of the previous sentence.

The committee voted unanimously to approve the rule as amended during the meeting. Judge Welling will draft a transmittal letter to the supreme court with the committee’s recommended changes. The new legislation goes into effect on January 9, 2023.

C. Drafting Subcommittee

1) Update

Judge Welling reports that the subcommittee continues to move through a fine-tooth comb review of the rules.

2) Evidence Rule (c)

The full committee left blanks for the drafting subcommittee to fill in an appropriate deadline. The subcommittee selected 5 days (based on the deadline for reports from CJD 96-08(3)(b)) and 48 hours based on C.R.C.P. 48(b)(1)(A) (subpoenas must be served no later than 48 hours before the time for appearance set out in the subpoena).

A county attorney member of the committee observed that the 5-day deadline would be new. The committee recognizes that any number that is put in will be more of an aspirational guideline than a requirement because there is no sanction attached to the rule. Given that it’s a guideline, the committee felt it best to conform to the rule of seven and make it 7 days. But the committee also felt it was important to make the number consistent with the chief justice directive. Terri Morrison indicated that CJD 96-08 is currently being reviewed for updates by

CIP. Judges Furman and Meinster stated that they are on CIP and will suggest that this portion of the CJD be modified to state 7 days.

- D. Rule Proposal from Access to Justice Committee re Interlocutory Appeal Advisement
 - 1) Update

Zaven Saroyan related that the subcommittee met on 7/9 and will be meeting again on 8/18. He believes a third meeting will likely be needed. The subcommittee is looking for form a consensus. But, if a consensus cannot be formed, then the group will bring 2–3 proposals for the committee to review.

- E. Proposed ICWA Rules
 - 1) Update

Judge Furman reports that progress continues to be made.

- F. Vision Subcommittee
 - 1) Update

Judge Welling indicated that he has to finalize something for the survey before it goes out and he will work on completing finalization.

IV. New Business (none)

V. Adjourn

Next meeting, October 7, 2022 at 9 AM via Webex.

Respectfully Submitted,

*J.J. Wallace
Staff Attorney, Colorado Supreme Court*

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of October 7, 2022**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order at 9:11 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair		X
Judge (Ret.) Karen Ashby	X	
David P. Ayraud		X
Jennifer Conn	X	
Traci Engdol-Fruhworth	X	
Judge David Furman (acting Chair)	X	
Ruchi Kapoor		X
Magistrate Randall Lococo	X	
Judge Priscilla J. Loew	X	
Judge Ann Gail Meinster	X	
Trent Palmer		X
Josefina Raphael-Milliner		X
Professor Colene Robinson		X
Zaven "Z" Saroyan	X	
Judge Traci Slade		X
Anna Ulrich	X	
Pam Wakefield	X	
Abby Young	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison		X
Terri Morrison		X
J.J. Wallace	X	
Special Guests: Dylan Docker & Sheri Danz		

Meeting Materials:

- (1) Draft Minutes of 8/5/2022 meeting**
- (2) Proposal from Judge Moultrie RE Withdrawal/Termination of Provisionally Appointed RPC (draft CJD 16-02 & Rule 2.1)**
- (3) HB22-1038 Right to Counsel for Youth (Memo on work process)**
- (4) Memos from Drafting Subcommittee (Re Intervention, Order to Interview or Examine the Child, and Search Warrants)**

(5) Rule Proposal and Notice Re Interlocutory Appeal

II. Chair's Report

- A. Judge Furman stepped in as Chair for Judge Welling, who could not attend today's meeting.
- B. The 8/5/22 meeting minutes were approved after making a slight correction to the attendance.

III. Old Business

- A. Proposal from Judge Moultrie RE Withdrawal/Termination of Provisionally Appointed RPC & CJD 16-02

Judge Moultrie was in a hearing and unable to attend today's meeting. Zaven Saroyan and Abby Young, who were on the subcommittee with Judge Moultrie, walked the committee through the recommended changes to CJD 16-02. A motion was made and seconded to forward the recommended changes to the Chief Justice and Judicial Legal Counsel. The motion passed unanimously. Terri Morrison (Judicial Legal Counsel) had previously indicated that she could help facilitate implementing changes, so the draft CJD will be sent to her.

The committee also reviewed the draft rule. A motion was made to adopt the rule and forward it to the drafting subcommittee. The motion was seconded and also passed unanimously.

- B. Drafting Subcommittee

- 1) Recommendation Re Intervention

Judge Furman explained the subcommittee's recommendation to modify the intervention rule to remove a specific reference to permissive intervention and to remove the bulk of the comment, which specifies who may intervene. A motion to approve the recommendation was made and seconded. The committee discussed the draft rule. One member observed that the rule reads like the court does not have discretion to grant or deny the motion. A suggestion was made to switch the order of subsection (a) and (b), so that discussion of the procedure for intervening (filing a motion, placing no restrictions on who can file such motions, providing grounds in the motion, etc.) comes before identifying those who have a right to intervene. The committee felt this small change to the structure of the rule solved the problem. After further brief discussion, the committee voted unanimously to approve the recommendation of the subcommittee (with the small change to the structure) of the rule.

2) Recommendation Re Order to Interview or Examine Child

The committee agreed with the recommendation to redraft the rule and formed a subcommittee, led by Anna Ulrich. Traci Engdol-Fruhworth and Zaven Saroyan will assist.

3) Recommendation Re Search Warrants

A motion was made to approve the new draft of the search warrant rule. The motion was seconded, and the committee voted unanimously to approve the new, simplified version of the rule referencing the statute.

C. Rule Proposal from Access to Justice Committee re Interlocutory Appeal Advisement

Z offered the following background surrounding the draft rule and notice language provided with the meeting materials:

SUMMARY: The C.R.J.P. Committee was asked by the Access to Justice Committee (AJC) to consider whether it was appropriate to create a new C.R.J.P. 4.3.5, requiring an advisement of the right to appeal to be given to the parties at the adjudicatory/dispositional phases of dependency cases. The Advisement Rule Subcommittee was formed by this Committee and tasked to make recommendations regarding the AJC's suggestion.

EXPLANATION: The Advisement Subcommittee has reviewed AJC's suggestion and agrees that the creation of a Rule 4.3.5 is appropriate. The Subcommittee undertook the drafting of a proposed rule and presents it with unanimous support for the Committee's consideration. The Subcommittee also undertook drafting proposed sample language for the order to assist the Courts and ACAs and to create a uniform order for use in the state and likewise presents it for consideration.

1) Draft Rule

A motion was made and seconded to adopt the proposed rule. A brief discussion was held. Anna Ulrich, who participated on the subcommittee, emphasized that the rule reflects the spirit of cooperation and collaboration among the members of the subcommittee. No individual member was entirely satisfied with the language of the draft rule, but the language achieved hard-won agreement.

To make the rule consistent with references in the other rules, the reference to “respondent parent(s)” was replaced with “respondent(s)” in (3). The members voted unanimously to adopt the rule with the small change.

Later, during the discussion of the notice, a member motioned to amend the rule to specify “in writing” in subsection (1) to make clear that the court must include some sort of advisement on a written order. The committee noted that this would be a change because it would require the dispositional order to be in writing. The committee felt that written orders are the best practice. A written order is important because it is necessary appeal (and also starts the clock ticking on the appeal period). A member expressed hesitation to move forward with voting because the subcommittee put forth a lot of compromise effort to achieve the language of the draft rule and worried that changing the language could impact the compromise.

The matter was called to a vote. Nine members voted in favor of adding “in writing” into the rule and two members abstained.

2) Draft Notice

The committee debated whether to include the notice in language as a rule, as a separate form order, as a comment to the rule, or whether the notice language was best distributed to judges through CIP and training. Concerns were expressed about placing the language within the rules (as a comment, form, or rule) because the committee did not want to give the specific words undue weight. Conversely, another committee member indicated that the language would be helpful to promote uniformity across the state. The committee did not vote to approve the notice language. However, the committee reached consensus that the language was helpful and should be available for later review and distribution.

D. Proposed ICWA Rules

1) Update

Judge Furman indicated that the subcommittee continues to move through the rules. He also let the committee know that the supreme court approved [Rule Change 2022\(14\)](#), which amends the pro hac vice rule to waive the fee requirement and the requirement to associate with local counsel for tribal counsel seeking to intervene in ICWA cases. Members of the ICWA subcommittee were instrumental in bringing the issue to the attention of the court.

E. Vision Subcommittee

Item tabled until next meeting.

F. HB22-1038 Right to Counsel for Youth

Special guest, Sheri Danz from OCR recapped the charge of the subcommittee: review the draft rules with an eye toward making updates to them where necessary to reflect the child's clarified role as a party with a client-directed counsel. OCR went through the draft rules and identified a preliminary list of rules for updating. For example, the subcommittee should take a fresh look at the disclosure/discovery rule to see if the new CFY role impacts that rule. The subcommittee held its first meeting and by its next meeting, other members will conduct a review of the draft rules to add to the list of rules needing updating. The subcommittee will communicate closely with the drafting subcommittee to ensure that they are working from the most recent set of draft rules.

OCR also identified a few areas where new rules may be needed. For example, they believe rules around the child attending court may be needed. An OCR staff member has volunteered to research other states' rules in this area. They also believe a form appointment order would be helpful (and are interested in working with ORPC to ensure that each has a form order). Sheri also mentioned that a rule clarifying CFY's role, i.e., they have standing to act in a representative capacity for the child, may be helpful.

Sheri asked the committee to provide the subcommittee with a deadline to finish the work and suggested June 2023. The committee approved the deadline.

Sheri let the committee know that she will probably not attend future C.R.J.P. committee meetings. Anna Ulrich will be available at the regular meetings and any questions can be funneled through her.

IV. New Business (none)

V. Adjourn

Next meeting, December 2, 2022 at 9 AM via Webex.

Respectfully Submitted,

*J.J. Wallace
Staff Attorney, Colorado Supreme Court*

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of December 2, 2022**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby		X
David P. Ayraud	X	
Jennifer Conn	X	
Traci Engdol-Fruhworth		X
Judge David Furman (acting Chair)	X	
Ruchi Kapoor		X
Magistrate Randall Lococo	X	
Judge Priscilla J. Loew		X
Judge Ann Gail Meinster		X
Trent Palmer		X
Josefina Raphael-Milliner	X	
Professor Colene Robinson		X
Zaven "Z" Saroyan	X	
Judge Traci Slade	X	
Anna Ulrich	X	
Pam Wakefield	X	
Abby Young	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Meeting Materials:

(1) Draft Minutes of 10/7/2022 meeting

(2) Memo from Drafting Subcommittee (Re Emergency Protection Order Rule)

II. Chair's Report

A. The 10/7/22 meeting minutes were approved without amendment.

III. Old Business

A. Drafting Subcommittee

Judge Welling updated the committee that the drafting subcommittee is making progress. He passed along three trends with the work. The subcommittee is generally (exceptions sometimes occurring):

- Cross-referencing statutes rather than repeating whole portions of statutory text to avoid overly-lengthy rules;
- Quoting statutory text rather than paraphrasing to avoid confusion or interpretive difficulties; and
- When there is not a statutory “hook” or other authority, remaining silent (avoiding creating new law) or sticking to providing only procedural guidance.

Later in the meeting, when the Chair asked about new business, Z Saroyan asked for the committee to approve the subcommittee’s continued use of cross-references. The committee offered a generalized approval for the approach.

Judge Welling also let the committee know that the drafting subcommittee was now meeting every other week to build momentum and pick up the pace toward completion.

1) Recommendation Re Emergency Protection Orders

Judge Welling related the subcommittee’s request to approve a new direction for the Emergency Protection Order rule, outlined in the memo with the meeting materials. A motion was made and seconded to approve the new direction.

After a brief discussion, the committee voted unanimously to approve the amended rule.

B. Proposed ICWA Rules (Judge Furman)

Judge Furman stated that the subcommittee is almost done with its work.

C. Vision Subcommittee (Judge Welling)

Judge Welling related that he needs to complete something before the survey can go out. He will work on that and hopes to issue the survey in the New Year.

D. HB22-1038 Right to Counsel for Youth (Anna Ulrich)

Anna Ulrich reminded the committee that the new CFY legislation is effective January 9th. The subcommittee has met a couple of times already. Sheri Danz is heading the subcommittee and has designed a work plan that projects completion by next summer. The main challenge will be overlaying with the drafting subcommittee, but there is good communication between subcommittees. The 1038 subcommittee hopes to stay just behind the drafting committee will avoid either subcommittee doing double the work.

E. Subcommittee to redraft Rule on Order to Interview or Examine Child (Anna Ulrich)

Anna Ulrich also provided an update on this subcommittee. The subcommittee has met once, and she projects it will meet 1–2 more times before completing the new draft rule.

IV. New Business

A. Z raised an new issue as outlined in section III(A) of these minutes.

B. It was decided that J.J. Wallace email all the 2023 Webex invites to committee members now, so that the meeting dates will be on everyone’s calendars.

V. Adjourn

The meeting adjourned just before 9:30 AM. The next meeting is February 3, 2023 at 9 AM via Webex.

Respectfully Submitted,

*J.J. Wallace
Staff Attorney, Colorado Supreme Court*

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of February 3, 2023 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby		X
David P. Ayraud	X	
Jennifer Conn		X
Traci Engdol-Fruhworth	X	
Judge David Furman	X	
Ruchi Kapoor		X
Magistrate Randall Lococo		X
Judge Priscilla J. Loew		X
Judge Ann Gail Meinster	X	
Trent Palmer		X
Josefina Raphael-Milliner	X	
Professor Colene Robinson		X
Zaven "Z" Saroyan	X	
Judge Traci Slade		X
Anna Ulrich	X	
Pam Wakefield	X	
Abby Young		X
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Meeting Materials:

- (1) Draft Minutes of 12/2/2022 meeting**
- (2) Emails on Form Order Appointing CFY & Form Order**
- (3) Updated Memo & Redlined and Clean Rule Proposals on Order to Interview or Examine the Child**
- (4) Emails on Trial by Jury Rule and Rule Proposal**

II. Chair's Report

- A. The 12/2/22 meeting minutes were approved without amendment.

III. Old Business

- A. Drafting Subcommittee (Judge Welling and Judge Furman)

The Chair reported that the subcommittee has established a good pace—meeting every other week—and continues to make slow and steady progress. The Chair thanked the subcommittee members for all they've done and their dedicated effort. He also related that this subcommittee has been closely coordinating with the 1038 subcommittee in order to avoid duplicating efforts. He reports coordination has gone well.

- B. Proposed ICWA Rules (Judge Furman)

Judge Furman stated that the subcommittee is finalizing its work and there appears to be light at the end of the tunnel.

- C. Vision Subcommittee (Judge Welling)

Work has been tabled for now in favor of focusing on the drafting committee.

- D. HB22-1038 Right to Counsel for Youth (Anna Ulrich)

Anna Ulrich reminded the committee that “1038” refers to the bill number of the law, effective as of last month, that authorizes children 12+ to now have client-directed counsel instead of a GAL. The subcommittee is reviewing the draft rules with the new role of counsel for youth in mind.

The subcommittee has almost completed the rule for counsel of record. Judge Welling asked if the subcommittee believed that the counsel of record rule needed to be approved soon (and earlier than the other rules). The chair of the subcommittee felt that approval with the other rules would be fine.

Along with the rule, the subcommittee looked at a proposed appointment order, which is being vetted by several groups. The form order was provided with the meeting materials so that this committee could review it and offer comments. It is anticipated that the form would go through SCAO as a JDF form because that process offers an efficient route for updating (rather than as a form approved by the supreme court and adopted with the rules, which is a slower process for making updates and amendments).

One GAL member reported that she had used the form order for one of her cases but added language to reflect that she was the educational surrogate for the youth.

Judge Welling asked for reports from the field on how the new role was going. One GAL reported that she has a 16-year-old client and that she advised the client of her new role, which requires keeping client confidences and direction from client, but she's uncertain the client fully understands. The GAL member also reported having a 17-year-old client, but she stayed the GAL because of the client's diminished capacity and a new lawyer was appointed to serve as CFY. Several members indicated it was too early to tell how things were going.

The Chair thanked members for their reports. He expects that any need for rules will come from the ground up and will rely on members to offer their insights to the committee.

The Chair also thanked the 1038 subcommittee members, who, like the drafting subcommittee members (many of whom are the same), are meeting every other week. Their diligent efforts are appreciated.

E. Subcommittee to redraft Rule on Order to Interview or Examine Child (Anna Ulrich)

Anna Ulrich thanked the subcommittee members for their help in coming up with a strong proposal. She recapped that the committee had asked the subcommittee to revise the draft rule based on a recommendation of the drafting subcommittee. The goal was to stick to the statute and create a uniform process for applying for a court order under section 19-3-308(3), C.R.S. (2022). The only portion of the rule not specifically set out in statute is (b), which sets out the minimum kinds of information required and that the information be sworn. Since the statute authorizes incarceration to secure compliance with the order, the subcommittee felt this should be required for such orders.

Anna mentioned that there were no county attorneys on the subcommittee and, since this rule primarily involved DHS, she felt county attorney feedback would be useful. The Chair suggested and the committee agreed that final voting on the rule would be put off until the next meeting in April so that committee members could think about the draft rule and solicit feedback from others. The agenda item was tabled until the next meeting.

IV. New Business

A. Waiver of Jury Trial (Judge Meinster/Judge Moultrie)

Judge Meinster stated that she and Judge Moultrie have discussed the rule covering jury trials in relation to problems faced by trial courts. She explained that trial courts set several trials (and other matters) because, on the trial date, there is no certainty which jury trials (if any) would be going forward. She felt there was currently a lack of clarity regarding waiver of the jury trial right.

They reviewed the current version of the draft rule (approved by the committee some time ago) and felt it provided more clarity but offered two suggestions: (1) dropping “in person” from (b)(3) to reflect the prevalence of virtual hearings and (2) consider defining “pretrial conference” to provide a little more clarity. In looking at the draft rule, another member also asked whether “a child through their guardian ad litem or counsel for youth” reflects the new state or representation for children (best interests for children < 12; client directed for children > 12).

The Chair said the suggestions will be forwarded to the drafting committee and reminded committee members that the draft rules, after being polished by the drafting subcommittee, will come back to the larger committee.

V. Adjourn

The Chair observed that the meetings lately have been short. He attributes this to all the hard work being done by subcommittees and thanked everyone for their hard work. Justice Gabriel, on behalf of the supreme court, also thanked everyone for their efforts.

The meeting adjourned just around 9:45 AM. The next meeting is April 7, 2023 at 9 AM via Webex.

Respectfully Submitted,

*J.J. Wallace
Staff Attorney, Colorado Supreme Court*

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of April 7, 2023 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby	X	
David P. Ayraud	X	
Jennifer Conn	X	
Traci Engdol-Fruhworth		X
Judge David Furman	X	
Ruchi Kapoor		X
Magistrate Randall Lococo		X
Judge Priscilla J. Loew	X	
Judge Ann Gail Meinster		X
Trent Palmer		X
Josefina Raphael-Milliner	X	
Professor Colene Robinson		X
Zaven "Z" Saroyan	X	
Judge Traci Slade		X
Anna Ulrich	X	
Pam Wakefield	X	
Abby Young	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison		X
J.J. Wallace	X	
Special Guest: Sheri Danz		

Meeting Materials:

- (1) Draft Minutes of 2/3/2023 meeting**
- (2) Emails on Form Order Appointing CFY & Form Order (clean and redlined)**
- (3) Updated Memo & Redlined and Clean Rule Proposals on Order to Interview or Examine the Child & Feedback from David Ayraud**

II. Chair's Report

- A. The 2/3/23 meeting minutes were approved without amendment.

III. Old Business

- A. Drafting Subcommittee (Judge Welling and Judge Furman)

Judge Welling reported that the subcommittee continues to make steady progress. As in the past, when issues arise, the subcommittee will bring the issue to the attention of the larger committee. Judge Welling also indicated that the subcommittee continues to have good communication with the 1038 Subcommittee and both groups have avoided duplicating efforts.

- B. Proposed ICWA Rules (Judge Furman)

Judge Furman states that the subcommittee is in the process of finalizing the rules.

- C. HB22-1038 Right to Counsel for Youth (Anna Ulrich & Special Guest Sheri Danz)

Anna Ulrich explained the reasons behind drafting a form order and the steps that have been taken to create one, which included working closely with ORPC and other stakeholders. The Chair thank everyone for working together. Anna noted that the form order attempts to strike a balance between making sure a CFY or GAL has access to the information they need and making sure a CFY or GAL does not have access to information, such as the private records of parents, that they should not have. Anna asked if any committee members had questions.

One member asked if any trial judges participate in drafting the form order. Anna responded that three different trial judges/magistrates participated. Another member asked whether the child's records, such as medical records, should be automatically available to the CFY for a sixteen-year-old client or whether the sixteen-year-old client should first provide a release. Sheri stated that the form order was drafted to track the exact language of section 19-3-203(4). However, she added that CFYs are trained to offer thorough advisements to their clients on the CFY's role, how the client may direct a CFY, and that the client has the ability to say yes or no to something.

The committee unanimously approved the form order. It was previously determined that the form order should go out as a JDF. Judge Welling and J.J. will assist Sheri and Anna in moving the form toward JDF status.

Anna also reported that the 1038 committee is continuing its review of the draft rules. She announced that next up is looking at rules to implement youth participating in court hearings. She encouraged any members with experience with youth in court to contact her with feedback.

D. Subcommittee to redraft Rule on Order to Interview or Examine Child (Anna Ulrich)

Anna Ulrich recapped the history of this issue and directed everyone to the meeting materials. David Ayraud gathered some feedback on the proposed draft rule and submitted it for the committee's review. He summarized the feedback. Anna was uncertain of the next steps but suggested that the draft rule be sent back to the subcommittee to consider the feedback. She also asked David to participate in the meeting and asked him to invite any other county attorney willing to participate. The committee approved sending the proposal back to the subcommittee to discuss the feedback.

IV. New Business

The Chair reminded committee members that the June meeting has been cancelled. The next meeting will be the first Friday in August.

V. Adjourn

The meeting adjourned just around 9:38 AM. The next meeting is August 4 at 9 AM via Webex.

Respectfully Submitted,

*J.J. Wallace
Staff Attorney, Colorado Supreme Court*

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of August 4, 2023 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:05 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby		X
David P. Ayraud		X
Jennifer Conn	X	
Traci Engdol-Fruhworth		X
Judge David Furman	X	
Ruchi Kapoor		X
Magistrate Randall Lococo	X	
Judge Priscilla J. Loew		X
Judge Ann Gail Meinster	X	
Trent Palmer		X
Josefina Raphael-Milliner		X
Professor Colene Robinson		X
Zaven "Z" Saroyan	X	
Judge Traci Slade	X	
Cara Nord for Anna Ulrich	X	
Pam Wakefield	X	
Abby Young	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	X
Terri Morrison	X	
J.J. Wallace		
Special Guests: Jack Trope, member of the ICWA Rules and Resources Subcommittee		

Meeting Materials:

- (1) Draft Minutes of 4/7/2023 meeting**
- (2) Proposed ICWA Rules**
- (3) Letter Re: Discovery**
- (4) Memo Re: C.R.C.P. 10**
- (5) Memo Re: Removing (d) from Admissions or Denial Rule**

Chair's Report

A. The 4/7/23 meeting minutes were approved without amendment.

II. New Business

A. ICWA Rules Proposal

The Chair acknowledged the hard work of the ICWA subcommittee and introduced Judge Furman, who recapped the subcommittee's work and introduced the proposal. He noted the subcommittee recommends that the rules be sent to the supreme court as a separate, freestanding rule set (and not rules within the Rules of Juvenile Procedure) because ICWA applies to areas of law outside the Children's Code.

Judge Furman reported that the subcommittee strove to synthesize the various ICWA authorities into easily readable rules. To improve readability, the subcommittee did things such as breaking down large blocks of text into their subparts and replacing "shall" with "must" (or another more appropriate word). Like with other committees, the subcommittee wrestled with extensively quoting the authorities. The subcommittee settled on proposing general rules which cover all ICWA areas using the same words as the source authority when possible but pointing to the source authority for more detailed information. A good example of this is Rule 5. The rule, covering emergency removal or placement of a child, says "the parties must follow the procedures set forth in [authorities]" and lays out the basic standard. The rule mostly points to the appropriate authorities. Thus, the rules have extensive citations. The subcommittee felt that the value of the precise citation to practitioners outweighed the effort it will take to ensure the citations remain current.

Judge Furman then went through the rules one by one taking comments from committee members.

On Rule 1, the Chair recommend removing the brackets from "[F]oster care placement" in the definition section. This change was made.

Z Saroyan suggested re-ordering the series at the end of the comment of Rule 1 to read: "These Colorado Rules of ICWA Procedures are intended to ensure compliance with ICWA, the related ICWA regulations, and corresponding state law." The change would place "with ICWA" and "the related ICWA regulations" together and put "corresponding state law" at the end instead of between ICWA and regulations. The committee agreed with this change.

Cara Nord asked whether the ICWA subcommittee accepted the recommendation from the 1038 subcommittee to add language to Rule 11 to clarify that the court's discretionary choice to provide counsel for a child under ICWA does not supplant or abrogate any right to counsel under state law. The final proposal included the following language to address that issue: "if the court is not required to appoint counsel for the child pursuant to applicable law."

No other suggestions for change were made. One member stated that she thought the rules would be a very useful resource for people in this area.

A motion was made to approve the rules as amended today and send to the supreme court with a recommendation that they be adopted as freestanding rules. The motion was seconded, and the question called.

The committee voted unanimously (10-0) by roll call vote in favor of the motion, and it passed.

Judge Welling again thanked the subcommittee for the effort and indicated that he would write a transmittal letter to the court with the recommendation.

III. Old Business

A. Drafting Subcommittee (Judge Welling and Judge Furman)

1) Update

Judge Welling reported that the drafting subcommittee continues its progress. He stated that the subcommittee drew inspiration from the ICWA subcommittee after seeing their finished product.

2) Letter Re Discovery

The Chair pointed out the letter he received from ORPC about pervasive issues around discovery and the urgent need for resolution of those issues. He explained that, in response, the drafting subcommittee recommends expediting finalization of the discovery rule and releasing that separately from other rules. The 1038 committee recently examined the discovery rule and pointed out issues related to current version of the rule and the new role of children as parties with client-directed counsel. The drafting subcommittee will now be taking up the discovery rule with a goal of finalizing it by the October 6 full committee meeting. The Chair asked if there was an objection to this plan. No objection was made.

Cara Nord indicated that there may also be some urgency to the rule (being drafted by the 1038 committee) covering children in court. The substantial change in law has resulted in a need for direction in this new area. Judge Meinster noted that the jury trial rule is fairly simple and straightforward and there is also a pressing need for this rule to be in place ASAP. Committee members generally agreed that these areas were also pressing needs.

3) Memo Re Recommendation to Civil Rules Committee RE C.R.C.P. 10

The drafting committee considered adopting a version of C.R.C.P. 10 into the juvenile rules but recommends that the juvenile rules utilize C.R.C.P. 10 instead of adopting a separate rule. C.R.C.P. 10 is one-stop-shopping for captions, and it applies uniformly, even to case types with their own sets of procedural rules (e.g., probate and water cases). However, the drafting committee recommends asking the civil rules committee to adopt two minor changes to C.R.C.P. 10: including Juvenile Court as a court type and adding “Juvenile Rules of Procedure” to section (h).

A motion was made and seconded to approve the recommendation. By voice vote, the motion passed unanimously.

Judge Welling will email Judge Jones, Chair of the Civil Rules committee, making the request to amend C.R.C.P. 10.

4) Memo Re Removing (d) (Waiver of Factual Basis) from Admission or Denial Rule

Judge Welling summarized the memo and the committee’s recommendation to remove the express approval of waiving a factual basis from (d) of the rule. The subcommittee acknowledged that some jurisdictions routinely allow a waiver of the factual basis as a matter of local practice, but there was uncertainty about how this practice comports with the requirement that the court find that the petition’s allegations were supported by a preponderance of evidence.

Z Saroyan believes that parties may enter into this kind of stipulation and sees no problem with waiver being in the rule. Another committee member agreed.

Judge Slade pointed out that by removing the waiver of factual basis language from the rule, the rule is silent on the issue. Thus, parties may

still enter into agreements to waive the factual basis without violating the rule.

Because the committee did not reach consensus and seemed to be thinking over the issue, the Chair suggested tabling this issue until the next meeting. The Chair asked members to think about it for the next couple of months and to ask for feedback from colleagues and other stakeholders.

B. HB22-1038 Review of Draft Rules Subcommittee

Cara Nord and the Chair related that the 1038 subcommittee is moving at an aggressive pace, working closely with the drafting subcommittee, and hopes to finish its work soon. The subcommittee is currently working on drafting a youth in court rule.

IV. Adjourn

The meeting adjourned just around 10:01 AM. The next meeting is October 6 at 9 AM via Webex.

Respectfully Submitted,

*J.J. Wallace
Staff Attorney, Colorado Supreme Court*

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of October 6, 2023 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby		X
David P. Ayraud		X
Jennifer Conn	X	
Traci Engdol-Fruhworth	X	
Judge David Furman	X	
Magistrate Randall Lococo	X	
Judge Priscilla J. Loew		X
Judge Ann Gail Meinster		X
Trent Palmer		X
Josefina Raphael-Milliner		X
Professor Colene Robinson	X	
Zaven “Z” Saroyan	X	
Judge Traci Slade	X	
Anna Ulrich	X	
Pam Wakefield	X	
Abby Young	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison		X
Terri Morrison		X
J.J. Wallace	X	
Special Guests: Melanie Jordan, ORPC & Sheri Danz, OCR		

Meeting Materials:

- (1) Draft Minutes of 8/4/2023 meeting**
- (2) Emails Re 2023 Legislation Impacting Respondents and Draft Rules with Suggested Updates**
- (3) Email Re Recording Ex Parte Removal Hearings**
- (4) Memo Re Removing Factual Basis From Admission or Denial Rule**
- (5) Youth in Court Memo & Proposed Rule**
- (6) New Order to Interview or Examine Child; Investigation Proposal, Memo and Previous Proposal**

Chair's Report

A. The 8/4/23 meeting minutes were approved without amendment.

II. New Business

A. Recognition of Service

Tabled until the December meeting.

B. ORPC Proposals to Address 2023 Legislative Changes

Melanie Jordan, Policy Director at ORPC, explained that there have been several 2023 legislative changes that have potential impacts to rules: HB23-1024 (Placement with Family and Kin); SB23-039 (Incarcerated Parents); and HB-1027 (Family Time). Some are small tweaks (suggestions provided in the draft rules packet provided). She briefly outlined the suggested changes in the packet. She also pointed to more comprehensive changes that involve new things that are not addressed in the rules, e.g., family time.

After her presentation a committee member asked how she would like to move forward. Melanie suggested: 1) approving the proposal for the small changes and 2) form a subgroup to look at comprehensive changes.

Sheri Danz added that the 1038 subcommittee determined that a rule on hearings is important. She believed focusing on a rule on hearings could frame the discussion because the new legislation affecting ORPC and OCR both seem to impact hearings. A committee member stated that she does not oppose forming a subcommittee, but reminded the committee that the drafting subcommittee's complete focus is on discovery right now, so any involvement by the drafting subcommittee must wait.

As a way to move forward, the chair suggested forming a subcommittee (involving the same people as were on the 1038 subcommittee, provided they are available), to first review the proposal in the packet, which could then go to the drafting subcommittee. Then, as a second step, have the subcommittee look at the constellation of legislation to see if there are holes in the rules. He believed it would be useful for the subcommittee to try to reach consensus on whether rules are appropriate or necessary. If there is a split, the subcommittee can come back to the big committee for philosophical direction. If there is a consensus, undertake drafting of new rules. Magistrate Lococo, Z, Abby Young, and Anna Ulrich volunteered for "New Legislation" subcommittee. The chair asked Melanie to take the lead on the subcommittee, and she agreed.

C. Requiring Ex Parte Emergency Removal Hearings to Be Recorded

Z indicated that some jurisdictions, like Weld County, are making FTR records of ex parte hearings and believes this is a good idea. His preference would be to have a mandatory rule or, if not mandatory, make it required absent good cause.

Magistrate Lococo went through his jurisdiction's (Weld) process for emergency removals. A phone call initiates the process. A judicial officer is found. If it's during business hours, then the hearing is held via Webex (occasionally, it's in person). Then paperwork is done, and a shelter hearing is set. These hearings sometimes happen at night, in which case, there is no record. If it's a night or weekend, it's only done over the phone and the paperwork follows the morning of the next business day.

Anna Ulrich was concerned that some jurisdictions, particularly rural ones, do not have access to FTR from their computers and need clerk assistance to make records. Abigail Young indicates that, just this week, in her court (Denver Juvenile), judges have been given computer access to FTR, but she indicates that this is only because she has staffing shortages. Other judicial officer members indicate that they do not have similar access.

One member noted that sometimes a verbal order is given, but no case is filed. In this instance, there is no record of the hearing because there's no case in which to place a minute order or scheduled event showing that there was a hearing. There is no paper trail at all.

One judicial officer mentioned that, because the statute authorizes verbal orders, he felt that requiring a record or a written order doesn't comport with the statute. Recognizing that he's just one voice on the committee, forming a subcommittee and drafting a rule seems unnecessary to him and analogizes to a police officer taking someone into custody. The judicial officer members indicate that there are wide differences throughout the state in procedures.

Other members were ambivalent about the need for a rule but felt that a rule should not increase delay for removing children where time is of the essence.

The chair recommended authorizing Z to look into the matter further and continue to develop it to give a consensus report to the committee to see if it should be pursued further. In the meantime, anyone can offer Z feedback.

III. Old Business

A. ICWA Rules Proposal

The Colorado Supreme Court has put the proposed rules out for comment. Written feedback is due Nov. 30th. A public hearing is set for Dec. 12th. If you would like to speak at the public hearing, sign up by Nov. 30th.

B. Drafting Subcommittee

1) Update

As he mentioned last time, the Chair explained that the subcommittee is currently entirely focused on discovery. He believed that the rule may be ready for the December meeting.

2) Memo Re Removing (d) (Waiver of Factual Basis) from Admission or Denial Rule

Anna provided a reintroduction to this issue. To recap, waiver of factual basis is common practice, but not expressly authorized by statute. The committee was letting the issue simmer since the discussion at the last meeting. Z would like waiver of factual basis expressly authorized by the rule. Others felt remaining silent in the rule maintains the status quo. The committee reviewed the draft rule and considered the recommendation to remove (d).

A member moved to vote to adopt the recommendation. It was seconded. The question was called. The motion passed with one dissenting vote. The recommendation to remove an express authorization to waive the factual basis was adopted.

C. HB22-1038 Review of Draft Rules Subcommittee

1) Memo on Youth in Court

Sheri Danz drew the committee's attention to the memo on p. 80 of the packet to provide background on the issues. Namely, children now have the right to attend and fully participate in all hearings. Because this is a significant shift, the feeling was that a rule to guide implementation would be important. OCR has also put training and practice standards into place to ensure their attorneys are advocating for and advancing this right.

She directed the committee's attention to the overview, which is placed before the proposed rule. The overview reflects what the committee thought was important in thinking about children and youth in court. The overview includes two areas not covered by the proposed rule that the subcommittee identified that may need updating to include children and youth in court: advisements and hearings.

2) Proposed Rule

Sheri summarized the proposed rule on "Children and Youth Attendance and Participation in Court" and the commentary. She also mentioned that (d) on separate hearings applies to more parties than just children. She wanted to highlight that point so that the committee may consider including that portion of the rule somewhere else. For example, in a rule on hearings.

The chair noted that there's more commentary than usual. The subcommittee included the commentary because it's there to assist embrace of this big shift.

A motion was made and seconded to approve the rule for inclusion in the draft rules packet and to send to the drafting subcommittee. Discussion of the motion included thanking Sheri for her leadership on this rule. The question was called. The motion passed unanimously.

D. Subcommittee to redraft Order to Interview or Examine the Child; Investigation.

Anna Ulrich recapped the issue. She explained that this rule fills procedural holes in section 19-3-308, C.R.S. (2023). Because the court can order jail for noncompliance with its order, the subcommittee felt that, to protect due process rights, the statement to the court to secure the order should be sworn. In reviewing the options presented, the committee came to consensus that option 1 with the “good cause” language was the better option. The committee felt that this broader language, which echoed section 19-3-308(b)(3) (stating “upon good cause shown”), was the preferable course.

A motion was made to adopt option 1 with “must” instead of should. The motion was seconded. A brief discussion was held mostly thanking the subcommittee for their thorough work. The statute was very confusing, and the subcommittee did a good job wrestling with it. The vote was called, and the motion passed unanimously.

Other announcements:

2024 Meeting Schedule: The chair recommended keeping Webex because it helps facilitate greater participation. J.J. will send out the 2024 Webex invites.

Committee membership: There has been some turnover on committee. In December, think about where we can find additional members to ensure the representation we need.

IV. Adjourn

The meeting adjourned around 10:30 AM. The next meeting is December 1st at 9 AM via Webex. 2024 Meeting Schedule: February 2; April 5; June 7; August 2; October 4; December 6.

Respectfully Submitted,

*J.J. Wallace
Staff Attorney, Colorado Supreme Court*