

**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:

<b>Name</b>	<b>Present</b>	<b>Excused</b>
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	
<b>Non-voting Participants</b>		
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 8<sup>th</sup>. 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 8<sup>th</sup> or March 15<sup>th</sup>. She will notify committee members which meeting date works for the most people via email.

---

*Respectfully Submitted,*  
*J.J. Wallace*