

**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