

**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@colorado.edu, 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