

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 Meinstre	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 policies 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-Fruhwirth;
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 Meinstre 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