

AGENDA
COLORADO SUPREME COURT
RULES OF JUVENILE PROCEDURE COMMITTEE

Friday, December 2, 2022, 9:00 AM
Videoconference Meeting via Webex

- I. Call to Order
- II. Chair's Report
 - A. Minutes of 10/7/2022 meeting [pages 2–6]
- III. Old Business
 - A. Drafting Subcommittee (Judge Welling & Judge Furman)
 - 1) Recommendation Re: Emergency Protection Orders Rule [pages 7–8]
 - B. ICWA Subcommittee (Judge Furman & Justice Gabriel)
 - 1) Oral Update
 - C. Vision Subcommittee (Judge Welling)
 - 1) Oral Update
 - D. HB22-1038 Review of Draft Rules Subcommittee (Anna Ulrich)
 - 1) Oral Update
 - E. Subcommittee to redraft Re Order to Interview or Examine Child (Anna Ulrich)
 - 1) Oral Update
- IV. New Business
- V. Adjourn

2023 Meeting Schedule: February 3; April 7; June 2; August 4; October 6; December 1

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**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*

Memorandum

To: C.R.J.P. Committee
From: Drafting Subcommittee
Re: Emergency Protection Orders Rule
Date: 11/09/22

SUMMARY: The Subcommittee recommends modifying (d) of the Emergency Protection Order rule to remove the language allowing the order to be continued and replacing that language with a 72-hour limit on such orders.

EXPLANATION: Section 19-3-405, C.R.S. (2022) authorizes emergency protection orders by setting out who may request one (“the county department of human or social services, a law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been neglected or abused is being treated, or any physician who has before him or her a child he or she reasonably believes has been abused or neglected”); providing a non-exhaustive list of examples of what the order may include (“(I) Restraining a person from threatening, molesting, or injuring the child; (II) Restraining a person from interfering with the supervision of the child; or (III) Restraining a person from having contact with the child or the child's residence”); and requiring that, if the request for the emergency protection order does not come from DHS, then DHS must be “immediately” notified. § 19-3-405(2)(b)–(3). The statute then says: “In any case, such . . . emergency protection shall not exceed seventy-two hours, excluding Saturdays, Sundays, and court holidays.” § 19-3-405(4). The subcommittee recommends echoing this 72-hour limit in the rule.

The subcommittee notes that section 19-3-403(3.5), C.R.S. (2022), states “when an emergency protection order is entered pursuant to section 19-3-405, the court shall hold a hearing within seventy-two hours after placement, excluding Saturdays, Sundays, and court holidays, to determine further custody of the child or whether the emergency protection order should continue.” However, the language authorizing continuing the emergency order appears tethered to holding a hearing where the ex parte emergency order would be reviewed and continued only after due process was afforded to all sides (making it a regular order).

SUGGESTED NEW RULE:

Emergency Protection Orders

- (a) The court may issue verbal or written emergency protection orders as provided in section 19-3-405(2)(b), C.R.S. ~~upon the request of a peace officer, a child protection worker employed by a county department of human services, physician who is treating or an administrator of a hospital wherein a child is being treated reasonably believes the child has been abused or neglected.~~
- (b) The emergency protection order may include, but is not limited to an ~~e~~ order:

- (1) Restraining a person from threatening, molesting, or injuring the child;
 - (2) Restraining a person from interfering with the supervision of the child; or
 - (3) Restraining a person from having contact with the child or the child's residence.
- (c) If the court issues an emergency protection order that has not been initiated by the county department of human services, the court must immediately notify the county department of human services in order that child protection proceedings may be initiated, no later than the close of business on the next business day.
- (d) ~~If the county department of human services believes it appropriate that the provisions of the emergency protection order should remain in effect, the department must, within three business days, file a motion to continue the emergency protection order. In the motion to continue, the department may also request that the court modify the provisions of the protection order. The court must set the motion for hearing as soon as practicable.~~ Emergency protection orders shall not exceed seventy-two hours, excluding Saturdays, Sundays, and court holidays.