

AGENDA
COLORADO SUPREME COURT
RULES OF JUVENILE PROCEDURE COMMITTEE

Friday, October 7, 2022, 9:00 AM
Videoconference Meeting via Webex

- I. Call to Order
- II. Chair's Report
 - A. Minutes of 8/4/2022 meeting
- III. Old Business
 - A. Proposal from Judge Moultrie RE Withdrawal/Termination of Provisionally Appointed RPC (updated drafts to be circulated soon)
 - 1) Draft Rule
 - 2) CJD 16-02
 - B. Drafting Subcommittee (Judge Welling & Judge Furman)
 - 1) Recommendation Re Intervention
 - 2) Recommendation Re Order to Interview or Examine Child
 - 3) Recommendation Re Search Warrants
 - C. Rule Proposal from Access to Justice Committee RE Interlocutory Appeal Advisement (Z Saroyan)
 - 1) Proposed Rule
 - 2) Proposed Notice
 - D. ICWA Subcommittee (Judge Furman & Justice Gabriel)
 - 1) Oral Update
 - E. Vision Subcommittee (Judge Furman & Judge Welling)
 - 1) Update
 - F. HB22-1038 Review of Draft Rules Subcommittee (Anna Ulrich)
 - 1) Update & Memo (a short memo will be provided by 10/6)
- IV. New Business
- V. Adjourn

Next Meeting is scheduled for December 2nd

Cisco Webex

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**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of August 5, 2022**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order just after 9 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	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: Judge Pax Moultrie; Sheri Danz & Clancy Johnson		

Meeting Materials:

- (1) Draft Minutes of 6/3/2022 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 (Summary of Changes Chart, Draft CJD 04-06 & Rule 4.3)**
- (4) Draft of Evidence Rule Section (c) from Drafting Subcommittee**

II. Chair's Report

- A. The 6/3/22 meeting minutes were approved without amendment.

III. Old Business

- A. Proposal from Judge Moultrie RE Withdrawal/Termination of Provisionally Appointed RPC & CJD 16-02

Judge Moultrie recapped the need for covering provisional appointments in the rule, the formation of the subcommittee, and their process in proposing the draft rule. She invited questions or comments on the draft.

One committee member asked how provisional appointments would be reflected in the court's database. A clerk member indicated that, when a provisional appointment is made, it is reflected in the minute order and the order of appointment is otherwise entered in the same manner as any other appointment. She related that clerks are pretty good about entering attorneys in the computer and removing them when they withdraw or their appointment ends, so she didn't think new practices would be needed to be implemented for provisional appointments.

In examining the suggested changes to CJD 16-02, committee members suggested adding language to VI(b)–(c) to note that a provisional appointment would be an exception to those requirements (for example, there's no need for a JDF 208 for a provisional appointment). The committee then discussed several other instances where the CJD's language may need to be updated to reflect that a provisional appointment has different requirements from a regular appointment. Once it was pointed out that a provisional appointment would be an exception to various requirements, the committee suggested that the subcommittee do some more wordsmithing with that point in mind and provide a new draft for the committee to review.

- B. HB22-1038 Right to Counsel for Youth

The Juvenile Rules Committee discussed what type of changes or additions would be needed to the Draft Juvenile Rules currently being worked on by the Drafting Subcommittee. It was determined that, rather than have the Drafting Subcommittee tackle the directives of HB22-1038, in addition to its complete overhaul of the juvenile rules, it made more sense for a special subcommittee to be formed to focus on changes and additions to the Draft Rules to address this legislation. The Juvenile Rules Committee also determined that, since a subcommittee had already been formed related to juvenile rules and 1038, the same subcommittee could be used as a starting point to work on the Draft Juvenile

Rules & 1038. However, it was made clear that no one on the initial 1038 Subcommittee should feel obligated to continue on with the Subcommittee since the scope of the work had significantly expanded. New members are welcome. Anna Ulrich will head the group.

The committee recommends specifically reviewing rules related to:

- 1) Early appointment of GAL/Counsel for youth;
 - 2) Emphasizing that the child is now a party;
 - 3) The child has a right to attend court; and
 - 4) Implications (if any) for discovery with the child being a party.
- 1) Update to CJD 04-06 in light of HB21-1091 (Foster Youth in Transition) & HB22-1038 (Counsel for Youth)

Sheri Danz explained that OCR views updating the CJD as an opportunity to implement the new legislation. She related that the office met with the Chief Justice, who asked OCR to reach out to stakeholders for input. She noted that the office also met with OARC because there is a lot of crossover between OCR's practice standards and the Colorado Rules of Professional responsibility, which OCR implements. OCR also reached out to judges, CASA, county attorneys, and ORPC. OCR has also examined the experiences of other states, such as New Mexico, that have made similar transition. Sheri thanked the committee for agreeing to provide input.

Sheri clarified that they are not yet in the wordsmithing stage of reviewing the CJD (although please feel free to email her with proofreading-type suggestions by August 12th). Right now, they want to check the CJD's general substance and organization to insure the new legislation is included. The CJD sets out the appointing authority, who pays, practice standards, and court oversight for their attorneys. Sheri went through the summary chart and committee members offered feedback.

Judge Welling thanked Sheri for coming to the meeting and for asking for the committee's input and for her thoughtful work implementing the new legislation.

2) Rule 4.3

Anna Ulrich recapped that, at the last meeting, the committee noted that C.R.J.P. 4.3 would need to be clarified to reflect the new role of counsel for children 12+ in place of the GAL role. The proposed rule adds the new role and rephrases the how the peremptory challenges are allocated to make clear that they are allocated to the three groups (who must share the allocation within the group): 1)

petitioner; 2) respondents; and 3) the children. The committee added some punctuation for clarity by replacing the commas between each group name with semicolons and also added parentheses around “through their guardian ad litem or counsel for youth.” The committee also added “all” before the children to clearly indicate that all the children must share peremptory challenges.

While the committee was considering the rule it was noted that section (a) says that the court can demand a jury trial, which struck the committee as awkward phrasing since the court usually orders, not demands. Since the committee was already recommending a change to the rule, the committee also recommended removing the court from the list of those that may “demand” a jury trial and add “or the court, on its on motion, may order a jury trial” after the list of those who may demand a jury trial. The committee also changed the next sentence to add “or ordered” after “demanded” to be consistent with the new version of the previous sentence.

The committee voted unanimously to approve the rule as amended during the meeting. Judge Welling will draft a transmittal letter to the supreme court with the committee’s recommended changes. The new legislation goes into effect on January 9, 2023.

C. Drafting Subcommittee

1) Update

Judge Welling reports that the subcommittee continues to move through a fine-tooth comb review of the rules.

2) Evidence Rule (c)

The full committee left blanks for the drafting subcommittee to fill in an appropriate deadline. The subcommittee selected 5 days (based on the deadline for reports from CJD 96-08(3)(b)) and 48 hours based on C.R.C.P. 48(b)(1)(A) (subpoenas must be served no later than 48 hours before the time for appearance set out in the subpoena).

A county attorney member of the committee observed that the 5-day deadline would be new. The committee recognizes that any number that is put in will be more of an aspirational guideline than a requirement because there is no sanction attached to the rule. Given that it’s a guideline, the committee felt it best to conform to the rule of seven and make it 7 days. But the committee also felt it was important to make the number consistent with the chief justice directive. Terri Morrison indicated that CJD 96-08 is currently being reviewed for updates by

CIP. Judges Furman and Meinster stated that they are on CIP and will suggest that this portion of the CJD be modified to state 7 days.

- D. Rule Proposal from Access to Justice Committee re Interlocutory Appeal Advisement
 - 1) Update

Zaven Saroyan related that the subcommittee met on 7/9 and will be meeting again on 8/18. He believes a third meeting will likely be needed. The subcommittee is looking for form a consensus. But, if a consensus cannot be formed, then the group will bring 2–3 proposals for the committee to review.

- E. Proposed ICWA Rules
 - 1) Update

Judge Furman reports that progress continues to be made.

- F. Vision Subcommittee
 - 1) Update

Judge Welling indicated that he has to finalize something for the survey before it goes out and he will work on completing finalization.

IV. New Business (none)

V. Adjourn

Next meeting, October 7, 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: Intervention Rule
Date: 8/25/22

SUMMARY: The Subcommittee recommends taking out the specific reference to permissive intervention and, in the comment, removing “This rule will apply to at least 6 categories of applicants . . .” and the language that follows.

EXPLANATION: The subcommittee had difficulty thinking of an example of a permissive intervention in a dependency and neglect case. Because a routine example was not evident, the Subcommittee believed that, rather than explicitly stating that permissive intervention is allowed, it would be better to leave the concept of permissive intervention implicit in the procedure outlined in subsection (b) of the rule. That subsection authorizes “[a] person or entity desiring to intervene in a dependency or neglect action” to “file a motion to intervene.” There are no qualifiers on who can file. Thus, the Subcommittee believes that no one is prevented from asking for intervention, and the court may consider any motion that may be filed.

Also, the Subcommittee was hesitant to specifically identify types of individuals that may intervene and thereby implicitly sanction their intervention. Other than those situations identified in (a), which are authorized by statute, intervention scenarios are highly factual and context-specific. The Subcommittee felt that each individual situation must be examined based on its own unique circumstances. The Subcommittee worried that providing specific examples may lead to reliance on the commentary as the sole basis for intervention and thus deter a rigorous individual analysis.

The new rule would read as follows:

Redlined:

Intervention

(a) Intervention of Right; Grounds.

- (1) Parents, Grandparents, and Relatives.** Upon motion after adjudication, parents, grandparents, or relatives who have information or knowledge concerning the care and protection of the child ~~shall be are permitted to may~~ intervene as a matter of right.
- (2) Foster Parents.** Upon motion after adjudication, foster parents who have the child in their care for more than three months and who have information or knowledge concerning the care and protection of the child ~~shall be are permitted to may~~ intervene as a matter of right.
- (3) Indian Custodians and Indian Tribes.** In any ~~proceeding for the foster care placement of, or termination of parental rights to, an Indian child, dependency or neglect action involving an Indian child, an~~the Indian custodian of the child and the Indian child's tribe ~~shall have a right to has a right to may~~ intervene at any ~~time point~~ in the proceeding.

~~**(b) Permissive Intervention; Grounds.** Upon timely motion a court may permit a person or entity to intervene in a dependency or neglect action at any time in the proceedings when a statute confers a conditional right to intervene. In exercising its discretion a court shall consider whether the intervention will serve the best interests of the child and the public, whether the intervention will unduly delay or prejudice the rights of the original parties to the action, and whether the movant's interest is adequately represented by existing parties.~~

~~**(c) (b) Procedure.** A person or entity desiring to intervene in a dependency or neglect action shall ~~must file a motion to intervene and~~ serve ~~the motion a motion to intervene~~ upon the parties. The motion shall ~~must~~ state the grounds ~~therefor and~~ shall ~~cite the~~ legal authority ~~therefor, if any, that confers upon the applicant an unconditional or conditional right to intervene.~~~~

Comment

[1] This rule is intended to operate in conjunction with a separate rule applicable to parties and joinder. ~~This rule will apply to at least 6 categories of applicants: (1) Parents, grandparents, and relatives of the child who have not been joined as parties; (2) foster parents of the child; (3) a~~

~~person who does not fall within either of the foregoing categories but who would have standing to petition a court for allocation of parental responsibilities pursuant to § 14-10-123(1), CRS; (4) a person appointed by a parent to act as guardian for a child pursuant to 15-14-201, 202, CRS; (5) a person to whom a parent has delegated by a power of attorney any power regarding care, custody, or property of a minor for a period of not more than 12 months pursuant to CRS 15-14-105; and (6) a tribe acting pursuant to the ICWA, 25 U.S.C. § 1911(c).]~~

Clean:

(a) Intervention of Right; Grounds.

- (1) Parents, Grandparents, and Relatives.** Upon motion after adjudication, parents, grandparents, or relatives who have information or knowledge concerning the care and protection of the child may intervene as a matter of right.
- (2) Foster Parents.** Upon motion after adjudication, foster parents who have the child in their care for more than three months and who have information or knowledge concerning the care and protection of the child may intervene as a matter of right.

(3) Indian Custodians and Indian Tribes. In any proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe has a right to intervene at any point in the proceeding.

(b) Procedure. A person or entity desiring to intervene in a dependency or neglect action must file a motion to intervene and serve the motion upon the parties. The motion must state the grounds and legal authority therefor.

Comment

[1] This rule is intended to operate in conjunction with a separate rule applicable to parties and joinder.

Memorandum

To: C.R.J.P. Committee
From: Drafting Subcommittee
Re: Order to Interview or Examine Child
Date: 9/22/22

SUMMARY: The Subcommittee recommends forming a subcommittee to redraft this rule.

EXPLANATION: The Subcommittee recognizes that procedures around securing an order to interview or examine a child would be helpful. However, the draft rule does not precisely track the process laid out in section 19-3-308(3), C.R.S. (2022) (e.g., there's no mention of the proceeding to show cause). The current draft rule also requires an affidavit, which the statute does not. The draft rule also seems to suggest that the interviewer can enter the home to investigate (which the Subcommittee believes would require a search warrant). The Subcommittee generally feels the rule's language authorizing "investigation" may be too broad.

The new rule would read as follows:

Present Draft Rule:

Order to Interview or Examine Child

- (a) If there is a report of a child being abused or neglected and if the department is denied the ability to interview, observe, or examine the child or the child's residence or location of the reported abuse by the child's parent, caretaker, or other responsible person, the department may apply for an order with the juvenile court or district court having jurisdiction for an order that the department be allowed to interview, observe, or examine the child and to conduct any necessary investigation. Such application must be in the form of an affidavit, sworn to or affirmed to before the judge. The affidavit must:
- (1) identify why the department has determined it necessary to interview, observe, or examine the child or the child's residence or location of the reported abuse;
 - (2) explain why the department has been unable to interview, observe, or examine the child or to conduct a necessary investigation;
 - (3) identify the person or persons responsible for not allowing the department to interview, observe, or examine the child or the child's residence or location of the reported abuse; and,
 - (4) identify or describe, as nearly as may be, the premises to be observed or examined.
- (b) If good cause is shown to the court to grant the application, the court must issue an order granting the application. The order must inform the responsible party or parties that failure to comply with the court's order may constitute contempt and subject the responsible party or parties to incarceration in the county jail until the responsible party or parties comply with the court's order.

Excerpt of section 19-3-308(3):

(3)(a) The investigation shall include an interview with or observance of the child who is the subject of a report of abuse or neglect. The investigation may include a visit to the child's place of residence or place of custody or wherever the child may be located, as indicated by the report. In addition, in connection with any investigation, the alleged perpetrator shall be advised as to the allegation of abuse and neglect and the circumstances surrounding such allegation and shall be afforded an opportunity to respond.

(b) If admission to the child's place of residence cannot be obtained, the juvenile court or the district court with juvenile jurisdiction, upon good cause shown, shall order the responsible person or persons to allow the interview, examination, and investigation. Should the responsible person or persons refuse to allow the interview, examination, and investigation, the juvenile court or the district court with juvenile jurisdiction shall hold an immediate proceeding to show cause why the responsible person or persons shall not be held in contempt of court and committed to jail until such time as the child is produced for the interview, examination, and

investigation or until information is produced that establishes that said person or persons cannot aid in providing information about the child. Such person or persons may be held without bond. During the course of any such hearing, the responsible person or persons, or any necessary witness, may be granted use immunity by the district attorney against the use of any statements made during such hearing in a subsequent or pending criminal action.

Memorandum

To: C.R.J.P. Committee
From: Drafting Subcommittee
Re: Search Warrants for the Protection of Children
Date: 9/22/22

SUMMARY: The Subcommittee recommends substituting “A search warrant for the recovery of a child must comply with section 19-1-112, C.R.S.” in place of the draft rule approved by the Committee.

EXPLANATION: The Subcommittee found that the text of the rule mostly recited the words of the statute but did not exactly follow the statute. Some words or phrases were slightly altered (e.g. “Name or describe with particularity the child sought” from the statute is stated in the draft rule as “identify with particularity the child sought”) or appear to have been left out (e.g., “and the reasons upon which such belief is based” was left off “explain why it is believed that the child is dependent or neglected”). Nothing in the draft rule added to or clarified the statute. Thus, the Subcommittee felt that pointing to the statute was preferable. A reference to the statute eliminates the risk that the rule and statute have language that conflicts. It also eliminates the need to monitor the statute’s language to see if anything has changed.

The new rule would read as follows:

Redlined:

Search Warrants for the Protection of Children

~~(a) — A Applications for search warrants for the recovery of a child shall must comply with be in the form section 19-1-112, C.R.S. of an affidavit sworn to or affirmed by a peace officer or a child protection worker employed by a county department of human services. The affidavit shall:~~

~~(1) — identify with particularity the child sought;~~

~~(2) — explain why it is believed that the child is dependent or neglected;~~

~~(3) — identify or describe, as nearly as may be, the premises to be searched; and,~~

~~(4) — explain why it is believed that the child is located on the premises searched; and,~~

~~(5) — explain why the search warrant is necessary to recover the child.~~

~~(b) — The court shall issue the search warrant if it finds that probable cause exists to believe that grounds for the application exist.¹ The warrant shall:~~

~~(1) — identify by name or describing with particularity the child sought and the place to be searched for the child; and,~~

~~(2) — state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof.~~

~~(c) — The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the court may so direct.~~

~~(d) — A copy of the warrant, the application therefor, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought.~~

~~(e) — If the child is found, the child may be taken into the temporary custody of the county department of human services or such other person or agency as the court directs.~~

~~(f) — The warrant shall be returned to the issuing court.~~

Clean:

Search Warrants for the Protection of Children

A search warrant for the recovery of a child must comply with section 19-1-112, C.R.S.

Proposed Adjudication Advisement Rule 4.3.5

1. The juvenile court must inform the parties in the initial dispositional order of the right to appeal the order adjudicating the child(ren) dependent and neglected and the initial dispositional order, upon the entry of the initial dispositional order.
2. The advisement must include the time limit for filing a notice of appeal and a statement that all claims arising out of the adjudication and the initial dispositional order must be raised in a timely appeal or may be waived.
3. If the respondent parent(s) are pro se, the juvenile court must inform them of the right to appointed counsel through the Office of Respondent Parents' Counsel if they are found to be indigent. If the pro se respondent parent(s) inform the court of the desire to appeal, the court must notify the Office of Respondent Parents' Counsel in accordance with any applicable chief justice directive within seven calendar days.

Adjudication Advisement Draft Language

Notice to all Parties:

Upon service of this signed order, the parties have a right to appeal the adjudicatory order and the initial dispositional order, unless previously waived. If the order is signed by a district court magistrate, the parties have seven days to file a petition for magistrate review in the county district court. If the order is signed by a district court judge, the parties have 21 days to file the notice of appeal in the Colorado Court of Appeals. All issues must be raised before the appropriate appellate court or may be waived. If a respondent parent is found to be indigent and chooses to appeal, the parent has the right to appointed counsel through the Office of Respondent Parents' Counsel.