

**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:

<b>Name</b>	<b>Present</b>	<b>Excused</b>
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	
<b>Non-voting Participants</b>		
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*