

**Colorado Supreme Court Rules of Juvenile Procedure Committee  
Minutes of February 5, 2021**

**I. Call to Order**

The Rules of Juvenile Procedure Committee came to order around 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, Chair	X	
David P. Ayraud	X	
Howard Bartlett		X
Jennifer Conn	X	
Sheri Danz	X	
Traci Engdol-Fruhworth	X	
Judge David Furman	X	
Melanie Jordan	X	
Ruchi Kapoor		X
Shana Kloek AND Andi Truett	X	
Wendy Lewis	X	
Peg Long	X	
Judge Ann Meinster	X	
Chief Judge Mick O'Hara		X
Trent Palmer		X
Professor Colene Robinson	X	
Magistrate Fran Simonet		X
Judge Traci Slade	X	
John Thirkell	X	
Pam Wakefield		X
<b>Non-voting Participants</b>		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

**Guest: Shannon Smerker, juvenile unit supervisor from the 18<sup>th</sup> JD**

**Meeting Materials:**

- (1) Feedback from Juvenile Justice Stakeholders re: C.R.J.P. 3.7**
- (2) Advisement Rule re: section 19-1-109(2)(c), C.R.S. (2020)**

**II. Chair's Report**

- a. Approval of the 10/2/2020 meeting minutes  
The minutes were approved without amendment.
- b. New Member Welcome-Melanie Jordan  
The chair recognized a new committee member, Melanie Jordan from ORPC, who introduced herself. Current committee members then introduced themselves.
- c. Membership Renewals  
Many members' terms are expiring at the end of March. The chair explained that members with expiring terms will receive an email. He asked members to reply to the email to confirm their willingness to renew.

### **III. Old Business**

- a. C.R.J.P. 3.7 & SB19-108  
Not much feedback was received and the feedback that was received did not reach a consensus favoring a particular proposal. Comments indicated that the proposals set out in pages 10–12 of the meeting materials accurately convey the changes and are meritorious.

Two members related that the legislature is likely to reorganize article 2 of title 19 this year, which will impact any reference to a particular statute in the rule.

One member favored the proposal at page 11 of the meeting materials, which modifies (h), deletes the last sentence (which is now in conflict with the statutes), and alerts courts and parties that orders must conform to the three statutes impacting juvenile detention. He felt it struck the right balance of alerting folks that there are detention hearing requirements that they should be following and where to look for those requirements. Another member agreed it was a happy medium. One member expressed concern over the details that can be involved in temporary orders for custody under section 19-1-115, C.R.S. (2020). On the whole, the committee felt that the proposal at page 11 broadly encompasses the many changes brought by Juvenile Justice Reform without going into very specific details of the reform.

A member moved to approve the proposal at page 11 of the meeting materials. The motion was seconded. The motion carried unanimously.

The chair will draft a letter to the supreme court with the committee's recommendation. Justice Gabriel explained the process the court will take to review the recommendation and suggested the letter to the court include: Need for rule change; Process the committee used to proposed the change; Why the particular change is recommended; and Recommendation on when the rule change should be effective.

b. Rule Proposal from Access to Justice Committee re Interlocutory Appeal Advisement

David Ayraud recapped the history of this agenda item and the committee's past discussion of the pros (providing an advisement of rights is good) and cons (worry over the details of the advisement and worry over creating substantive rights). Justice Gabriel added that the committee took up the issue at the direction of the Access to Justice Committee, who were in turn prompted by *A.R. v. D.R.*, 20 CO 10 (stating that "subject to limited exceptions, the failure to file a timely notice of appeal from the adjudication will generally result in the dismissal of an appeal of the adjudication order").

One example of an advisement rule (not required by statute) is the advisement required by magistrates under C.R.M. 7(a) and 7(b). The committee felt that was not a very helpful example because magistrate cases are divided into two paths (consent required/no consent required), which impacts the process to seek review.

The committee considered removing "the court shall" and replacing it with "the court should," making the rule suggest that advising is a good idea, but not requiring it to avoid making a substantive right. The committee also discussed, if the advisement wasn't required, putting it in a comment as a best practice. Some members felt that the rules should either direct the court to a requirement or not mention it.

The member from ORPC sees value in requiring an advisement because, right now, we are relying on RPC to make the advisement, and if RPC is ineffective, no advisement is made (as was the case in *A.R.*).

The member from OCR sees a lot of difficulties in hammering out the details of a one-size-fits-all advisement (e.g. what kind of advisement is required for an absentee parent) and fears that requiring an advisement sets out substantive rights, which will be raised at the dispositional stage and will delay permanency for children. Other members agree that gaming out an appropriate advisement will be difficult.

In the present rules, there is a brief appeal advisement in C.R.J.P. 4.2(a)(10) ("any party has the right to appeal any final decision made by the court"). But the committee is not convinced that "any party" has a right to appeal and feels that the phrase "any final decision" is not very clear.

Given the difficulties, a member made a motion to abandon trying to draft an advisement rule.

In discussing the motion to abandon the effort, several members (Melanie Jordan, Sheri Danz, John Thirkell, David Ayraud, Judge Furman, and Judge Ashby) volunteered to take another look at drafting an advisement rule, keeping in mind all of the issues raised by the committee. A recommendation was made to include Polly Brock, clerk of the court of appeals, in the discussion. The motion to abandon was withdrawn, and the committee agreed to table the discussion until the next meeting.

c. Proposed ICWA Rules

Judge Furman provided an update on ICWA rules. The subcommittee has joined forces with a group from court services to review the ICWA draft rules. The joint meeting will take place on 2/26. John Thirkell express interest in assisting the effort and was invited to join the meeting.

**IV. New Business**

a. Committee Membership Make up

Given that the committee continues to receive feedback on all the juvenile rules, and right now, the committee is comprised of mostly D&N stakeholders, the chair asked if the committee should expand to include other stakeholders and asked for suggestions from the committee. Most committee members felt expanding was a good idea and recommended probation/pretrial service, district attorneys, and public defenders. The chair will accept recommendations from committee members on how to expand membership to other stakeholders.

b. Pending legislation to reorganize Article 2 of Title 19

Sheri Danz is on the committee working with the legislature to reorganize article 2 of title 19. She stated that there is a larger goal to align the statutes with juvenile development, but for now, they are focused on reorganizing. She explained that there will not be any substantive changes; the changes are aimed at reordering the statutes to follow the flow of a juvenile delinquency case. She also indicated that the statutes are being amended to conform to the rule of seven.

**V. Adjourn**

Next meeting, April 23, 2021 at 9 AM.

*Respectfully Submitted,*

*J.J. Wallace*

*Staff Attorney, Colorado Supreme Court*