

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of February 7, 2020 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 AM 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 Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby, Chair		X
David P. Ayraud	X	
Magistrate Howard Bartlett		X
Jennifer Conn		
Sheri Danz	X	
Traci Engdol-Fruhworth		X
Judge David Furman		X
Ruchi Kapoor	X	
Andi Truett for Shana Kloek	X	
Wendy Lewis	X	
Peg Long	X	
Judge Ann Meinster		X
Judge Dave Miller	X	
Chief Judge Mick O'Hara		X
Trent Palmer		X
Professor Colene Robinson	X	
Magistrate Fran Simonet		X
Judge Traci Slade		X
Magistrate Kent S. Spangler	X	
John Thirkell		X
Pam Wakefield		X
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Attachments & Handouts:

- (1) Excel Sheet of Feedback with Attachments A & B; Emails from David and Trent
- (2) Email from Peg and CASA perspective
- (3) JV E-filing

(4) 1/21/20 version of draft rules (emailed)

II. Chair's Report

A. The 10/4/19 minutes were approved without amendment.

III. Old Business

A. General Corrections to the Set of Draft Rules

1. Continued (Deferred) Adjudications: (h) conflicts with § 19-3-702(1)(a)

The committee decided to delete (h) and add a comment which refers to the federal funding statute.

1.1 Continued (Deferred) Adjudications: (f)

The committee agreed to remove the brackets from “dismiss the case” and ensure the rule includes dismissal as an option.

1.2 Continued (Deferred) Adjudications: clarify (d), (f), and/or (4)

The committee deleted “or upon finding additional circumstances exist that are or would be injurious to the welfare of the child” from (d) leaving it so that terms and conditions may be amended by agreement of the parties. Related to this, the committee also deleted (f)(4), which addressed hearings. The committee recognized that a situation could arise where one party wants to amend the terms and conditions and another party objects to the amendment. If this situation arises, the committee was confident that the court could figure out how to proceed. Thus, the committee agreed that the rules need not address this specific situation.

The committee also wondered whether (f)(3) was supported by case law. David Ayraud believed it was and offered to find the case.

1.3 Continued (Deferred) Adjudications: (f)(1) “whether the respondent has failed to comply with the terms and conditions” is potentially misleading?

Tabled to next meeting. The committee discussed whether (1) and (2) should be combined to clarify that compliance is not the sole measure of the Continued (Deferred) Adjudication. David Ayraud related that the procedures were set out in two steps to highlight that there are two steps and adjudication is not just based on noncompliance. A combined version will be provided for the next meeting for comparison.

2. Authorizing the Filing of a Petition: two options in current draft

The committee decided to go with the first option, which says that the court need not hold a hearing but does not forbid holding a hearing. The committee felt that this option gave the court the most flexibility.

3. Pre-trial motions: (a)(1) duty to confer has two options

The committee decided to go with the second option, which matches the language of C.R.C.P. 121 § 1-15(8).

One committee member point out that the duty to confer is in two places in the draft. The committee also recognized that the current draft contains repetition of rules. When each substantive area subcommittee drafted their proposal, each subcommittee considered areas of overlap such as motions, service, conferral, etc. The committee would like the drafting subcommittee to look for repetition, point out the repetition, and make recommendations for ensuring a unified whole.

3.1 Pre-trial motions: (d) service of motion is empty

The committee chose to delete (d) because service is covered in the next rule (Reports, Filings, and Other Pleadings). To highlight that part of the rule, the committee added “service” to the title.

3.2 Pre-trial motions: should service of term motions be treated differently from other motions?

The committee recognized that the termination motion statute, section 19-3-602(2), C.R.S., covers advisement and service of a termination motion. However, the committee felt a catch-all “unless otherwise provided by law” to the service of motions requirement would be useful and insulate the rule from changes in the statute. Saying “unless otherwise provided by law” is sufficiently broad to cover any future changes, so the rule will not have to be changed any time a statute is changed.

As related issue, the committee noted that the statutes on termination, part 6 of title 19, article 3, provide more procedural details than other statutes (requirements for motion, advisement, affidavits, timing of termination motion, etc.). As a result, the rules do not focus on termination proceedings. But this contrasts sharply with the tremendously detailed information outlining adjudication process and may leaving users wondering why the sharp difference. The committee suggested that the drafting committee keep an eye on this issue and make a recommendation to achieve a harmonious product.

Also relatedly, the committee discussed the value of repeating the statute in the rules. The committee determined that the drafting committee will be charged with highlighting when a rule repeats a statute, so that the committee can determine the value of doing so in each instance.

3.3 Pre-trial motions: (a) & Responsive Pleadings and Motions (f) or (g)?

The language referenced tracks C.R.C.P. 121 § 1-15(3). On balance, the committee felt that “may” gives the court discretion to act (or not act) and outweighs any ambiguity the parties may face in making tactical decisions about responding or not responding.

4. Responsive Pleadings and Motions: general rule or only adjudication?

For now, the committee leaves the draft as-is. As discussed by the committee in item (III)(A)(3), the committee refers this issue to the drafting committee. The committee would like the drafting subcommittee to look for repetition, point out the repetition, and make recommendations for paring down the repetition ensuring a unified whole.

4.1 Responsive Pleadings and Motions: (a) by adding con't adjudication to this section, are we extending the timeframe for denying jurisdictional matters longer than we intended?

The committee clarified the language of (a): Jurisdictional matters of age and residence of the child shall be deemed admitted unless specifically denied by a party in writing or orally on the record prior to the adjudicatory hearing, admission under Rule 4.2.3, or *the approval of the terms and conditions of a continued (deferred) adjudication under Rule 4.2.5, whichever occurs first.*

4.2 Responsive Pleadings and Motions: (e) Do we want to more explicitly state that court has the discretion to shorten these timeframes?

The committee explained that (e) is drafted as if the juvenile rules are adopting all of C.R.C.P. 121 § 1-15 for application in the juvenile rules and (e) sets out the modifications to the civil rule, which includes modifying response times. The committee decided to add "unless otherwise ordered by the court" to the default 14-day response time. The committee added a verb (may) to the section on replies. The committee also discussed whether to authorize motions to reconsider interlocutory orders (as the civil rule does). The committee felt that such motions are uncommon in D&N proceedings. And, to the extent that they are filed, they are generally magistrate reviews covered by the magistrate statute. The committee felt that interlocutory motions to reconsider should not be authorized.

5. Trial by Jury: (d) peremptory challenges

The committee has two goals it would like to achieve in the new (1) set out the peremptory challenges per side and (2) allow the court discretion in determining the allocation of peremptory challenges to achieve fairness. The committee would also like to address perceived unfairness in the present rule, which gives the GAL separate peremptory challenge (so, whichever side the GAL agrees with gets twice as many peremptory challenges as the opposing side). GAL committee members related that the rule was intended to buttress the GAL role as an independent party, but recognized that, in practice, it can seem unfair. Several proposals will be drafted and presented at the next meeting.

6. Form Release: length release is active

The committee felt that a two-year release, given that the release contains a blank revocation that may be exercised at any time, would be more helpful. The committee acknowledge that releases are the subject to many state and federal laws and regulations and that expertise in these applicable laws to review the release would be helpful. Terri Morrison, legal counsel for the branch, related that the probation department was currently developing a release and facing similar issues. She indicated that probation was working with the attorney general's office to identify a person with that kind of expertise to review its release. She will let the committee know if a person with expertise is identified who could provide the committee with a similar review.

7. Discovery: (c) Are GALs exempt from discovery only or discovery and disclosures?

Tabled until next meeting.

7.1 Disclosures: (f) requires "upon written request"

Tabled until next meeting.

7.2 Discovery: want to make sure we are not changing practice standards

Tabled until next meeting.

8. Order to Interview or Examine Child: should there be something for a response?

Tabled until next meeting.

8.1 Order to Interview or Examine Child: supported by affidavit (rather than form of affidavit)

Tabled until next meeting.

9. Temporary Custody (c): make consistent with Discovery (e)(2)

Tabled until next meeting.

9.1 Discovery(e)(2): make consistent with Temporary Custody (c)

Tabled until next meeting.

9.2 Temporary Custody: Much of this language is already in statute and some of the language contradicts existing statute. For example, 19-3-405(2)(a) uses the language "danger to the child's life or health in the reasonably foreseeable future." If we are going to repeat statutory language, we need to compare this to 19-3-405 and 19-3-403 to make sure that we are consistent.

Tabled until next meeting.

10. Emergency Protection Orders: (d) doesn't say what happens if department doesn't ask to continue the order

Tabled until next meeting.

11. Adjudication of Non-Appearing or Non-Defending Respondent: (a) "in person or through counsel may be unclear"

Tabled until next meeting.

11.1 Adjudication on Non-Appearing or Non-Defending Respondent: (b) Given some of the recent caselaw regarding offers of proof, we just want to make sure we are not creating appealable issues with this procedure of adjudication based on motion and affidavit.

Tabled until next meeting.

IV. New Business

1. CASA in Rules-Tabled to next meeting. At the next meeting, the committee will take up this agenda item first.

2. JV E-filing. The Judicial Department's IT division plans to begin rolling out JV e-filing in April or May. The initial roll-out will be document management only (the clerk's office will be able to upload documents to create an electronic record). It will be court-use only and will not initially allow outside access. IT's goal is have full JV e-filing in FY 2021.

V. Adjourn-Next Meeting April 24, 2020

The Committee adjourned at 11:45 AM.

Respectfully Submitted,
J.J. Wallace