

**Colorado Supreme Court Rules of Juvenile Procedure Committee  
Minutes of October 4, 2019 Meeting**

**I. Call to Order**

The Rules of Juvenile Procedure Committee came to order around 9:30 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:

<b>Name</b>	<b>Present</b>	<b>Excused</b>
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby, Chair	X	
David P. Ayraud		X
Magistrate Howard Bartlett		X
Jennifer Conn		X
Sheri Danz	X	
Traci Engdol-Fruhworth	X	
Judge David Furman	X	
Melissa Thompson for Ruchi Kapoor	X	
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
<b>Non-voting Participants</b>		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

**Attachments & Handouts:**

- (1) Rule 2.1 (appointment of counsel) new draft
- (2) New Draft of Permanency Hearing Rule & Notice
- (3) New Permanency Hearing Statute

#### **(4) 2020 Meeting Schedule**

### **II. Chair's Report**

- A. The 8/2/19 minutes were approved with one correction: on page 2, second paragraph from the bottom, "ORCP" should be "ORPC."
- B. The chair is still working on forming an editing group.
- C. The chair will reach out to Magistrate Timms, chair of the magistrate rules subcommittee (out of the civil rules committee) to offer a juvenile perspective on the magistrate rules. Justice Gabriel added that he is the liaison justice for the civil rules committee and, at the last civil rules meeting, he reminded the civil rules committee that they should reach out to the other rules committees in revising the magistrate rules.
- D. The chair announced that, at the next meeting, the committee will take up issues raised as feedback to the whole rules document. If any other members have feedback, please get it to J.J. in the next couple of weeks to include in for the next meeting.

### **III. Old Business**

#### A. Review of Present C.R.J.P

##### 1. Rule 2.1 (appointment of counsel)

Ruchi Kapoor was out of town, so Melissa Thompson from ORPC attended the meeting in her place. In preparing for the meeting, she noted that, more and more, jurisdictions are using Family First (FFPSA) and DANSR funds, to authorize the appointment of counsel before a petition is filed. *See also* § 19-3-202, C.R.S. She wanted the committee's input as to whether the current version of the rule includes that scenario. The committee felt that adding a comment noting that nothing in the rule limits pre-petition appointment of counsel would address the issue. Sheri Danz added that the same is true for GALs, *see* section 19-3-203, C.R.S., so the comment included reference to GALs as well.

The committee also commented on the absence of procedures for advising respondents or appointing counsel for respondents who are in-custody. They automatically qualify for counsel, but some courts require them to fill out paperwork and send it in before appointing counsel. Other courts only require the incarcerated respondent to request counsel before appointing counsel. Some automatically appoint. Uniformity around the procedures for appointing counsel for incarcerated respondents may be beneficial and ORPC will suggest some language to address this.

Melissa also mentioned that, occasionally, ORPC has to substitute counsel for unusual reasons (death, suspension, contract expired, etc.) and the CJD authorizes ORPC to do so. Thus, today's version of the draft includes procedures for ORPC substitutions.

One committee member mentioned that RPC have more procedural avenues for appointment than other kinds of counsel. To offer more clarity, the committee suggested moving the reference to appointment by ORPC from (a)(1) to (b) (which is the more

specific section aimed at appointing counsel for respondents) and to add a comment that (b) does not supplant (a), but merely provides additional procedures.

The committee also amended (b)(3)(D) to substitute “Hearing” for “Leave of Court” to make it clear that the court must approve a substitution, but it can do it without a hearing. The timing of the court’s order was also modified to start to run from the date of notification.

The committee also expressed general concern about all the rules and whether the committee has been specific enough or consistent enough in referencing the different kinds of attorneys that may be participating (and what the rules are calling them: GAL, attorney, counsel, respondent parent counsel, etc) and been consistent with any definitions already in section 19-1-103. Sheri volunteered to read the rules with an eye towards this issue. The possibility of a definition section in the front of the rules to specify the roles will be kept in mind.

2. Draft set of Rules-Feedback (from David Ayraud)  
Tabled to next meeting to wait for more feedback.

#### **IV. New Business**

##### **1. New Draft of Permanency Rule**

Judge Meinster and Professor Robinson explained the updates made to the draft rule to conform to the amended permanency statute. Not much changed in the notice.

The committee suggested modifying (d)(2)(D) to reflect that children can direct the GAL not to share their wishes with the court.

The committee also discussed a perceived ambiguity in the statute as to whether section 19-3-702(4)(b)(I)–(II) applies only to OPPLA children or youths or to all children or youths. The committee believed from its context that it applies only to OPPLA children and youths.

The committee also considered how deferred adjudications fit within the amended statutory procedures for permanency and explained that the amendments did not change the statute’s silence on permanency hearings for out-of-home children under deferred adjudications or informal adjustments (the permanency hearing is triggered by a disposition, which does not formally occur in a deferred adjudication or informal adjustment). Committee members felt the current comment [1] conflicted with the statute by requiring the court to have a permanency hearing within 3 months of the deferred adjudication or informal adjustment. Thus, the comment was amended noting that the statute doesn’t trigger a permanency hearing for these children and advising the court to address permanency in the shortest time possible for these children.

Related to this issue, committee members realized that (h) of the Continued (Deferred) Adjudication Rule also conflicts with the permanency statute (this will be addressed at next meeting).

Committee members also related that the General Assembly is ramping up implementation of the Family First Prevention Services Act (FFPSA). Many committee members are involved in various discussions on this topic, and they anticipate changes coming down the pike that may need to be reflected in the rules. Anticipating this, Sheri Danz, Judge Meinster, Judge Furman, and Ruchi Kapoor volunteered to keep an eye on the issue. If a subcommittee is formed, the committee also recommended Jennifer Mullenbach,(Jeffco County Attorney) for the subcommittee.

## 2. 2020 Meeting Calendar

The 2020 meeting schedule was emailed on 10/3/2019. No one on the committee noticed any obvious conflicts at this time.

## V. Adjourn Next Meeting December 6, 2019

The Committee adjourned at 10:50 AM.

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*Respectfully Submitted,  
J.J. Wallace*