

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of December 7, 2018 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 1:00 PM 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 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	
Ruchi Kapoor	X	
Andi Truett for Shana Kloek	X	
Wendy Lewis		X
Peg Long	X	
Judge Ann Meinster	X	
Joe Picard for 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	

Special Guests:

For Pre-Adj: Blair McCarthy

Attachments & Handouts:

(1) 11/2/18 Draft Meeting Minutes

(2) PreAdjudication Redlined & Clean

(3) Copy of Present C.R.J.P.

II. Chair's Report

- A. The Chair announced membership changes to the committee. Chief Judge Wilson has resigned from the committee. Peg Long, Colorado CASA board member, has joined the committee as the CASA representative.
- B. The November 2, 2018 minutes were approved without amendment or objection.

III. Old Business

A. Pre-Adjudication

Pre-Adjudication co-chair Judge Slade is currently in trial. Co-chair Traci Engdolf-Fruhworth and subcommittee member Blair McCarthy led the discussion.

They explained that they began with the existing version of the rules, starting with C.R.J.P. 4. The draft rule adds who may bring the petition, references to who must and may be named respondents, and a reference to the statute on service. The committee clarified the rule to note that there is a distinction between the County attorney (or designate) and the department of social services. The committee also settled on referencing the statute instead of specifically describing the respondents (or special respondents) that must or may be named.

The committee then talked about the utility of a rule that just references the statute. Those in favor of referencing the statute believed that having those references readily available promotes ease of use. Those opposed felt that providing a list of statutory references to assist lawyers was not the best use of a rule.

The committee asked what problem areas the subcommittee saw in current procedural practices that needed clarification. The subcommittee related that they discussed two areas where there is a procedural gap. First, the statute on amending a petition, section 19-3-505(4), C.R.S. (2018), covers amending a petition during trial, but there is no deadline for amending the petition before trial. The subcommittee believes a deadline would be helpful for practitioners. The committee agreed and suggested a 7 day deadline.

Second, the subcommittee discussed current problems with adding or dismissing parties and the standard a court must use to decide that issue, but the subcommittee felt that the legal standard for this decision is not clear and so drafting a rule would be a substantive decision on the law. The committee also noted that the proposed adjudication rules included a rule on joinder and that rule crafts procedures for joinder but does not provide any standards for joinder.

The subcommittee noted that there is quite a bit of overlap between their proposed rules and other subcommittees' work. They provided a rule on service of because pre-adjudication can be a heavy motions stage. The committee believes that generally

applicable rules, such as a rule governing motions, should be one rule, but directed subcommittees to identify any special needs their group feels should be included in the general rule. For pre-adjudication, procedures on emergency motions may be helpful (emergencies other than ex parte motions under 19-3-403, C.R.S. (2018)). The subcommittee felt a conferral requirement, even on emergency motions, was important. One committee member indicated that his jurisdiction has an administrative order on emergency motions and believes any rule addressing emergencies should be flexible so that diverse needs across the state could be met. Another member said that, in order to provide flexibility, the rule could set an outside limit which allows jurisdictions the flexibility to proceeding within those outside limits. The subcommittee also highlighted a special problem with service of motions in dependency and neglect cases, especially at the pre-adjudication stage. E-filing is not currently available for D&N case types, so everything is paper-filed with the court. Paper filing and mailing is not very efficient.

The committee members did not think that D&N e-filing would be rolled out in the near term, so any service rule should be flexible and account for the many different service methods currently being used. The subcommittee related that, because e-filing is not available for D&N cases, many jurisdictions have alternative electronic service agreements between counsel.

C.R.C.P. 5(b)(2)(D) authorizes service by “other electronic means” if written consent is given. Written consent includes placing an email or fax in the caption of any filing. Responsive pleadings are not required in D&N cases, so at this early stage, the subcommittee pointed out that RPC may not have made a filing with an email or fax. The committee feels RPC need timely notice of motions and electronic means are the most efficient.

For example, Douglas County uses a private company, Box, to facilitate electronic delivery of discovery and other pleadings. Other counties have an agreement to use email. Committee members pointed out that these agreements (to use Box, to use email, to use a courthouse mailbox) may not be reflected in writing in each case, but no practitioner indicated that there were problems using these systems. Some practitioners also indicated that for some respondents, particularly the homeless, notice by text message is best.

In this case, a broad rule, which deviates from the civil rule by authorizing alternative service without written consent may be necessary to match current practices. A comment may also be necessary to explain and give examples of the “other electronic means” which are authorized. The committee also agreed that an inmate filing rule was needed for D&N cases.

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Because service of motions and other pleadings is broadly applicable, J.J. Wallace will email the subcommittee chairs with proposed rules in these areas: discovery; adjudication; and pre-adjudication and will send the versions of each group in the hopes that the subcommittees can combine their portions into one generally applicable rule.

The subcommittee noted that the current version of C.R.J.P. 1 refers to the C.R.C.P. There was a brief discussion on referring to the C.R.C.P. Some committee members feel strongly that juvenile cases are different and do not involve the same interests as the average civil case, so the juvenile rules should be separate and self-contained and not refer to the C.R.C.P. Other members felt that referring to the C.R.C.P. is efficient and having new and different rules within the juvenile rules covering similar subjects would increase litigation. Committee members related that, in their experience, subcommittees look to the civil rules as a starting place. While consensus on whether to refer to the C.R.C.P. or to make the juvenile rules self-contained was not reached, the committee did agree that the committee and subcommittees should highlight any area in which the civil rules do not suit juvenile cases.

The rule on civil rule on captions, C.R.C.P. 10, does not work for juvenile cases because there are different kinds of parties in D&N cases.

The proposed rule like C.R.C.P. 11 is the same as the civil rule. Committee members related that they have occasionally seen limited representation in D&N cases.

The committee also related that, in looking at the pre-adjudication stage of a case, they believed some procedural issues at this stage overlap with procedural issues of other stages, particularly adjudication.

The subcommittee also updated the first appearance advisement rule. Their new draft includes a requirement that the court ask about ICWA. In order to determine UCCJEA issues, the subcommittee also recommends requiring an affidavit as to children, which the subcommittee adapted from domestic relations forms. Committee members agreed that late-revealed information on other child custody cases can set back D&N cases and delay permanency, so getting the information early is essential. The committee also noted that the discovery rules have made this information a priority by making it a mandatory disclosure.

The subcommittee also discussed the two issues referred to the subcommittee at previous committee meetings. First, the subcommittee was asked to consider whether there should be a rule that the court must appoint counsel whether a parent appears or not. For various reasons, the subcommittee did not think that rule would be beneficial. Second, the subcommittee considered a rule requiring all courts to adopt a uniform CMO in D&N cases. On this issue, the subcommittee believes its draft addresses the procedural problems a CMO would address. It believes formal CMOs should be left to the jurisdictions. The committee also noted that comments could be used to address best practices and the adoption of CMOs.

B. Review Present C.R.J.P 1 through 4.5

As the meeting came to a close, the committee's attention was drawn to the present C.R.J.P. included in the materials packet. Committee members were invited to review the present rules before the next meeting to determine if there is anything that has not been covered in the rule drafts or a present rule that should be modified.

In a brief review, committee members noted that C.R.J.P. 2.1 (appointment of counsel) may need updating to refer to CJD 16-02; C.R.J.P. 4.5 (contempt) may need to be updated to match actual practices; C.R.J.P. 4.3 (jury trials) may need clarification on peremptory challenges. *See People in Interest of J.J.M.*, 2013 COA 159. J.J. Wallace will send an email asking committee members to review the current list of rules and email concrete feedback on suggested changes to the rule and they will be on the agenda for the February meeting for full committee discussion.

IV. Adjourn

The meeting adjourned at approximately 3:45 PM. The next meeting will be on Friday, February 1, 2019 at 9 AM in the supreme court conference room.

Respectfully Submitted,
J.J. Wallace