Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of August 4, 2017 Meeting

The Rules of Juvenile Procedure Committee was called to order by Judge Ashby at 9:40 a.m., 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	
Kelly Boe		X
Cynthia Cavo	X	
Ashley Chase	X	
Jennifer Conn		X
Linda Weinerman for Sheri Danz	X	
Traci Engdol-Fruhwirth		X
Judge David Furman	X	
Ruchi Kapoor	X	
Andi Truett for Shana Kloek	X	
Wendy Lewis		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	
Chief Judge Jeffrey Wilson	X	
Non-voting Participants		
Justice Allison Eid, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Attachments & Handouts

(1) Adjudication Subcommittee Proposal (updated)
(2) Post-term Rule

I. Call to Order

II. Chair's Report

A. **Next meeting:** Sept. 22, 2017 @ 9:30 AM Supreme Court Conference Room, 4th floor

III. Old Business

1. Rule draft: Adjudication 4.2.6 Default OR Adjudication On Non-Appearing or Non-Defending Respondent (2 versions of the rule found at pages 10-12 of the Full Set of Adjudication Rules)

David Ayraud opened by explaining the highlights of the two rules. He indicated that these rules generated the most discussion out of all the rules. The subcommittee surveyed various jurisdictions to get an idea of how they handled non-appearing parties. He said 40% of jurisdictions use default for non-appearing parties; 40% have a short hearing with sworn testimony; and 20% used a variety of other methods. He also said that the subcommittee did not develop a clear preference between the two rules.

The committee began with the default rule:

- If default will be allowed by rule, the rules need summons language advising and giving respondents notice that default can be entered against them. Because the rule currently does not require responsive pleadings, see C.R.J.P. 4.1(a), summons language may need to advise respondents who "fail to defend" that default may be entered against them. The summons language should account for two scenarios: (a) non-appearing respondents who appear once or twice and then leave; and (2) non-appearing respondents who never appear.
- The rule sets out a two-step process (similar to C.R.C.P. 55): (1) entering default against the non-defending party; and (2) entering the adjudication.
- RPC likes that the rule provides a process to set aside a default. A process to set aside a default provides a way to cure notice problems. RPC generally prefers this rule to the alternative because of this one process. There was a discussion of trying to do a hybrid rule using the non-appearing respondent rule and then adding an element to set it aside, but David Ayraud thought the hybrid would only be possible for incompetent or minor respondents. The committee also discussed taking setting aside default out of this rule and drafting a separate, independent rule with a process for setting aside an adjudication (not just an adjudication entered by default).
- GALs expressed concerned that this rule (and the ability to set aside an adjudication generally), may delay permanency.
- Smaller jurisdictions like the default rule because it's hard to marshal resources for even a short evidentiary hearing for the large number of non-appearing respondents.
- The draft rule says that the affidavit for adjudication by default may be executed by the attorney for the petitioner. This is different from C.R.C.P. 121 § 1-14(1)(d), which requires a person with knowledge of the damages and the basis therefore and forbids the attorney from doing the affidavit. The subcommittee drafted the rule to allow for attorney affidavit because of smaller jurisdictions. A suggestion was made to add "with the permission of the court" at the end of the sentence to allow the court to decide if the attorney affidavit is sufficient or if a caseworker or other person with knowledge is required.

- If the committee goes with the default rule, the pre-adjudication subcommittee should think about the following issues: (1) appropriate advisement that default is possible; (2) right to counsel; (3) notice issues to ensure actual notice (for example, child support units might have a good address for a parent from a IV-D order, but the child welfare unit might say that they can't find the parent).

The committee then turned to the non-appearing respondent rule:

- This rule calls for a short evidentiary hearing (sometimes called "an offer of proof," but really it is an evidentiary hearing).
- This rule allows for cross-examination (unlike default)-it's an opportunity to test the evidence.
- The committee liked that this kind of adjudication was based on evidence (not a failure to appear or defend), so it would be harder to undo later, which is good for children's permanency and consistent with the Children's Code.
- But even under this rule, lack of proper notice might justify setting aside the adjudication (the committee emphasized again how important providing notice is in keeping the case on track). Thus, a separate rule on setting aside an adjudication could be helpful. A committee member pointed out that C.R.C.P. 60(b), which is currently applicable to D&N cases, already provides a mechanism to set aside an adjudication. He also noted that magistrates, who frequently hear D&N cases, cannot rule on C.R.C.P. 60(b) motions. The subcommittee should think about complexities added by the C.R.M., § 19-1-108, and case law on magistrates. Research assistance through the library is available if it is needed in exploring this issue.
- RPC raised concerns about this rule's application when there is a criminal case going on.
- The committee agreed that there is a need for a streamlined process of some sort.
- If the committee goes with the non-appearing respondent rule, the pre-adjudication subcommittee should think about whether there should be appointed counsel in every case (even when no one appears), which might provide a safety valve.
- Judge Ashby encouraged committee members to talk to their colleagues about the two proposed rules to get a sense if there is a preference.

2. Post-Termination

Judge Ashby, chair of the post-termination subcommittee, introduced the draft and spoke briefly about the subcommittee's process. The subcommittee did not draft any rules involving reinstatement of parental rights because (1) it does not appear that this had happened yet in the state; and (2) the statute seems to provide sufficient procedures. The main goal of the proposed rule was to put meat on 19-3-606. OCR was contacted about subsection (d) to comport with its practices.

- There was a discussion about whether subsection (g) should require a permanency review more frequently than every 6 months.
- There was a discussion about subsection (f)(5). The committee believes that courts should be encouraged to not just think about biological sibling relationships, but to maintain other relationships that are important to the child. For example, a relationship where a child has a psychological but not biological tie. The suggestion was made to offer a more expansive definition or explanation in a comment focusing on the

children's perspective of who is important to them and the relationships that they wish to maintain.

IV. **New Business**

A. Check in with subcommittees:

1. Discovery will be ready for the next meeting
2. Permanency will also be ready soon. The subcommittee has focused on permanency planning and has not addressed any rules for placement hearings under section 19-3-702(9) or the permanent home statute of 19-3-703. Judge Meinster will be contacting people about whether rules around placement hearings would be useful.

The minutes for the 5/12/17 meeting were unanimously approved.

Judge Ashby thanked the committee members for their active engagement. The Committee adjourned at 11:47 p.m.

Respectfully Submitted,
J.J. Wallace