AGENDA
COLORADO SUPREME COURT
RULES OF JUVENILE PROCEDURE COMMITTEE
Friday, February 2, 2024, 9:00 AM
Videoconference Meeting via Webex

I. Call to Order

II. Chair's Report
A. Minutes of 12/1/2023 meeting **[pages 2-7]**

III. New Business
A. Drafting Subcommittee (Judge Welling)
1) Memo Re Removing Evidence Section from the Adjudicatory Hearing Rule **[pages 8-9]**
B. Cancel April 5th meeting (Convening and Spring Break)?

IV. Old Business
A. C.R.J.P. 4.6 Disclosures and Discovery in Dependency and Neglect Cases
1) Comments due by 4 PM on April 11, 2024
B. Requiring Ex Parte Emergency Removal Hearings to be on the Record (Z Saroyan)-any updates?
C. New Legislation Subcommittee (Melanie Jordan)-any updates?

V. Adjourn

Upcoming Meeting Schedule: *April 5?; June 7; August 9; October 4; December 6*

Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of December 1, 2023 Meeting

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby	X	
David P. Ayraud	X	
Jennifer Conn		X
Traci Engdol-Fruhwirth		X
Judge David Furman	X	
Magistrate Randall Lococo	X	
Judge Priscilla J. Loew		X
Judge Ann Gail Meinster		X
Trent Palmer		X
Josefina Raphael-Milliner		X
Professor Colene Robinson	X	
Zaven "Z" Saroyan	X	
Judge Traci Slade	X	
Anna Ulrich	X	
Pam Wakefield	X	
Abby Young		X
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	
Special Guests: Sheri Danz and Jennifer Mullenbach		

Meeting Materials:

(1) Draft Minutes of 10/6/2023 meeting
(2) Memo and Proposal on Disclosure and Discovery Rule
(3) Memo from OCR (with reference materials)
(4) Memo from Judge Jones Re Gendered Pronouns in Rules
(5) Supplement: Memo from ORPC

II.

III.

The Chair recapped that the drafting subcommittee focused on this rule because the committee had received feedback that guidelines on discovery were needed as soon as possible. He noted that the subcommittee met every other week for 90 minutes, had robust discussions, and worked hard to strike an appropriate balance in the spirit of give and take. The Chair explained that the subcommittee was able to reach a consensus on most issues, but deferred to the larger committee on the three issues that are outlined in the memo in today's meeting materials. ORPC and OCR also provided memos giving their perspective on the issues. Z Saroyan summarized the ORPC memo, and Anna Ulrich summarized the OCR memo. The Chair then invited discussion.

I. Per Case or Per Contested Hearing

By way of background, Judge Ashby asked the judicial officers attending the meeting about current norms and problems with disclosure and discovery. Judge Slade stated that over the last 5 years she's sat on the D&N docket in 4 different counties. She has not seen outrageous discovery requests, unreasonable

demands, or persistent fighting over discovery. Magistrate Lococo does not currently sit on a D&N docket, but he's spoken with his colleagues in the area, and they did not note any problems. In his jurisdiction, things are mostly resolved informally. With that feedback, Judge Ashby felt assured that, since the rule allows courts to limit abuses, then we shouldn't worry too much about the precise numbers on a per case or per contested hearing basis.

Another member worried that the adoption of rules may change the culture of informal resolution. She expressed concern that the numbers on a per contested hearing could be adopted by practitioners as minimum requirements—she saw this as a potential for increased costs, increased delay, and the potential to increase disputes.

A different member felt limits in the rule by contested hearing (rather than by case) may discourage disputes because there will not be a strict limit to fight over.

One member indicated that the CMO in his jurisdiction sets limits by case. His experience shows him that disputes are minimized because people have to be strategic about using their limits. A judicial officer echoed that strategy point and also indicated that per case limits seemed easier for a court to manage.

A member opined that adopting a discovery rule is a big change for Colorado, so she favored smaller, more incremental change rather than sweeping change.

Another member analogized to DR cases, which have per case limits, even though there may be more than one hearing in the case and noted that judges are free to expand limits if the case requires more expansive discovery. A member added that, under the rule, judges may still do their own CMO.

A member moved to vote on "per case" or "per contested hearing." The motion was seconded. A roll call vote was held. Eight members voted for "per case." One member voted "per contested hearing." One member abstained. Per case passed.

II. Limits

The Chair pointed out that the current limits: 4-#-20-20-20 were the original numbers approved by the committee before sending the draft rules to the drafting committee. He believed the # in depositions by written examination should be tied to the regular deposition number (4).

Anna Ulrich and Z Saroyan recapped their positions outlined in their memos on this issue.

One member, who participated in the subcommittee and is happy to go along with the compromise, reluctantly stated that he felt the limits were too high and should be 2-2-10-10-10. The Chair emphasized that candid thoughts are appreciated because the committee is here to debate this issue and a frank discussion improves the debate. In this spirit, another member countered that he felt the numbers were too low.

Those supporting lower numbers liked that lower numbers are a measured approach and felt that the numbers could be increased later if needed. They also didn't want practitioners to believe they had to use all the authorized amounts for their discovery.

Those supporting higher numbers thought it might be worth adding a comment specifically saying that practitioners should not use their limits if the facts and circumstances of the case do not call for using all the limits. Their main argument against lower numbers was that they believed lower numbers would increase motions practice. Setting a higher number allows more leeway without having to file motions. One member noted that the number one problem she sees is securing docket time for contested hearings. She was wary of decreasing docket time for hearings in favor of motions, so she saw higher numbers as increasing overall efficiency.

The membership reached a consensus that it would be helpful to add a comment that the numbers do not set minimums for practitioners to use and practitioners should instead be guided by the circumstances of their case.

A member moved to adopt 4-4-20-20-20 as the limits with the proposed comment (wordsmithing the comment to be done later). The motion was seconded. A roll call vote was held. Eight members voted in favor of the motion. One member opposed the motion. One member abstained. The numbers will be 4-4-20-20-20. A comment will be drafted and circulated to everyone for final approval.

III. To Presume or Not to Presume

Anna Ulrich and Z Saroyan recapped their positions outlined in their memos on this issue.

A member stated that she favored the presumption for all children and youth. She believed D&N cases should not, as a rule, put children under intense microscopes.

A presumption disfavoring depositions doesn't completely disallow them, but it doesn't open the door to that kind of scrutiny either. A presumption requires a really good reason, which struck the member as fair.

A motion was made to include the presumption for all children and youth. The motion was seconded. A roll call vote was held. Seven members voted in favor of the motion. Two members voted against the motion. One member abstained. The motion carried and the presumption will be included.

IV. Other Feedback

The Chair asked if there was any other feedback on the rule. Z thanked the drafting subcommittee for their work. The Chair echoed the thanks. No other feedback was provided on the rule, but a member suggested circulating the final version so that committee members can review the new comment and catch any last-minute typos. That plan was adopted.

A motion was made to forward the proposed rule to the supreme court for consideration and inclusion as C.R.J.P. 4.6. The motion was seconded. A roll call vote was held, and the motion passed unanimously.

Justice Gabriel thanked the committee and subcommittee and stated that he admired the professionalism shown by all members, who were able to civilly disagree with each other.

a. **Gendered Pronouns in Rules**

The Chair informs the committee that all of all the rules committees' chairs are looking at the issue, hope to come to a consensus, and then decide plan of attack to implement consistent usage. Our committee has generally avoided pronouns, so the Chair does believe this will be a big issue for this committee.

Justice Gabriel offers that the options for pronouns are 1) use he or she, 2) use singular they, 3) use it, or 4) repeat the party name or title and avoid the pronoun altogether. He believes that the last approach seems to be prevailing. Justice Gabriel doesn't feel the supreme court will force committees to take a particular approach but would like the committees to consider it. The Chair will keep the committee posted on issue.

V. Old Business

a. ICWA Rules Proposal

A public hearing is scheduled for 12/12 at 3:30 PM. Since the deadline was yesterday at 4 PM, Justice Gabriel was not sure if the court received any comments. If no comments were received or there were only comments in favor of adopting the rules, then the public hearing may be vacated. If the hearing does go forward, it will be livestreamed.

b. **New Legislation Subcommittee**

Melanie could not attend today's meeting, but she is working on issue.

c. Requiring Ex Parte Emergency Removal Hearings to be on the Record

Z Saroyan has sent an email to a subcommittee looking for feedback, but no consensus has been reached. He will continue to investigate.

d. New Members

Committee members suggested Judge Moultrie and Judge Pawar as potential members.

VI. Adjourn

The meeting adjourned around 10:45 AM. The next meeting is February 2nd via Webex.

2024 Meeting Schedule: April 5; June 7; August 2; October 4; December 6.

Respectfully Submitted,

J.J. Wallace
Staff Attorney, Colorado Supreme Court

MEMORANDUM

TO: JUVENILE RULES COMMITTEE

FROM: DRAFTING SUBCOMMITTEE

SUBJECT: REMOVING EVIDENCE SECTION FROM THE ADJUDICATORY HEARING RULE

DATE: 2/2/2024

SUMMARY: The Drafting Subcommittee recommends removing section (c) (Evidence) from the draft rule on Adjudicatory Hearings.

EXPLANATION: Section (c) of the rule contains three substantive ideas found in the statutes. The sentence that begins "Evidence that child abuse or non-accidental injury . . ." comes from section 19-3-505(7)(a), C.R.S. (2023). The sentence that begins "Evidence tending to establish the necessity of separating the child . . . " comes from section 19-3-505(2). And the sentence beginning "Admissions by a party in support of an informal adjustment . . ." comes from 19-3-501(1)(c)(I)(B), C.R.S. (2023). The subcommittee feels that there is nothing procedural or rule-like in this section, these provisions are not widely applicable, and reciting these three substantive ideas in the rule is confusing. No one on the subcommittee could make a case for keeping this subsection in the rule but wanted to give members of the larger committee the opportunity to weigh in on removal.

DRAFT RULE TEXT:

ADJUDICATORY HEARING

(a) Prompt Hearing. An adjudicatory hearing must be held within the timeframes set forth in section 19-3-505, C.R.S.

(b) Burden of Proof. For the purposes of an adjudicatory hearing, the petitioner has the burden of proving the allegations of the petition by a preponderance of the evidence.

(c) Evidence. Evidence that child abuse or non-accidental injury has occurred shall constitutes prima facie evidence that such child is dependent or neglected, and such evidence shall be is sufficient to support adjudication. Evidence tending to establish the necessity of separating the child from the parents or guardian may be admitted at an adjudicatory hearing but shall not be required to support an order of adjudication. Admissions by a party in support of an informal adjustment shall not be used as evidence at a subsequent adjudicatory hearing involving the same parties and the same facts or circumstances.

(d) Amendment to Conform to the Evidence. When evidence presented at an adjudicatory hearing discloses facts not alleged in the petition, the court must proceed in accordance with section 19-3-505(4), C.R.S.

(e) Evidence of a Child with Mental Health Disorder or Intellectual and Developmental Disability. When evidence presented at an adjudicatory hearing shows that the child may have a mental health disorder or an intellectual and developmental disability, the court must proceed in accordance with section 19-3-506, C.R.S.

(f) Adjudication. When the allegations of the petition are supported by a preponderance of the evidence, the court must proceed in accordance with section 19-3-505(7), C.R.S.

(g) Dismissal. When the allegations of the petition are not supported by a preponderance of the evidence, the court must proceed in accordance with section 19-3-505(6), C.R.S.