

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of February 4, 2022**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order just after 9 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-Fruhworth	X	
Judge David Furman	X	
Melanie Jordan	X	
Ruchi Kapoor		X
Magistrate Randall Lococo	X	
Judge Priscilla J. Loew	X	
Clancy Johnson for Judge Ann Meinster	X	
Chief Judge Mick O'Hara		X
Trent Palmer		X
Josefina Raphael-Milliner	X	
Professor Colene Robinson	X	
Magistrate Fran Simonet		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	

Meeting Materials:

- (1) Draft minutes from 10.8.2021 meeting
- (2) [Guidelines for Drafting and Editing Court Rules](#)
- (3) Email from Melanie Jordan and HB21-1101

II. Chair's Report

- A. The 10/8/21 meeting minutes were approved without amendment.
- B. New Member Welcome: Anna Ulrich, Judge Loew, Magistrate Lococo & Josefina Raphael-Milliner

The new members introduced themselves to the committee and the current committee members introduced themselves to the new members.

III. Old Business

- A. Committee Membership Make-up

The Chair reports that two new members (Judge Loew and Magistrate Lococo) have been added to the committee in addition to the two new members who took the place of previous members (Anna Ulrich from OCR replacing Sheri Danz; Josefina Raphael-Milliner from CASA replacing Peg Long).

- B. Rule Proposal from Access to Justice Committee re Interlocutory Appeal Advisement

Melanie Jordan reports that she will reconvene the group looking at an advisement rule, which includes Anna Ulrich from OCR, and hopes to have a concrete proposal soon. The matter was then tabled until the next meeting.

- C. Drafting Committee

Judge Furman reports that the drafting subcommittee has been going over the draft rules. As part of that work, the subcommittee has found it useful to utilize *Guidelines for Drafting and Editing Court Rules* by Bryan A. Garner to help with consistency in making all the rules, authored by various subcommittees, have a uniform voice. The subcommittee would like the full-committee's approval for (1) utilizing the *Guidelines* as a general matter; and (2) as recommended in the *Guidelines*, avoiding using "shall" and defaulting to "must" in most circumstances, unless another word is more appropriate in context. The subcommittee's consistent usage list looks like this:

- Use must instead of shall as a default. May substitute will, should, or may if the context requires another word.
 - ✓ Must = is required to (default in most circumstances)
 - ✓ Must not = is required not to
 - ✓ May = has discretion to; is permitted to; has a right to
 - ✓ Is entitled to = has a right to
 - ✓ Will = (expresses a future contingency)
 - ✓ Should = (denotes a directory provision)

From [Guidelines for Drafting and Editing Court Rules p. 43](#) (or 29 as printed on the page)

- ✓ Under section 2-4-401(13.7), “shall” means that a *person* (person can mean entity-like government) has a *duty*.
- Use “juvenile court” instead of “trial court” or “court” but if used more than once in the same section, use “court” instead of repeating “juvenile court” over and over.
- Respondent is a consistent term for “respondent parent, guardian, or legal custodian”

What to do with Latin (italicize and whether to use Latin or plain language)-TBD

The committee’s attention was drawn to section 2-4-401(13.7), C.R.S. (2021), which provides a definition for “shall” for statutes. Some committee members expressed concern that they didn’t want to see a conflict between rules and statutes in the use of “shall” and asked the drafting subcommittee to keep the statutory definition in mind when examining each “shall.” The committee also discussed how the federal rules committees had moved away from “shall” and Colorado’s rules committees for appellate and civil rules were doing likewise. Some committee members felt that the move by other state rules committees to avoid “shall” weighed in favor of taking that approach to promote consistency among all the rules committees.

A motion was made and seconded to approve the subcommittee’s choice to avoid shall and substitute must or another word, if appropriate. The subcommittee will also keep in mind the statutory definition of shall. The motion carried unanimously.

A motion was also made and seconded to approve the subcommittee’s use of the *Guidelines* as a tool to assist the drafting subcommittee. Subcommittee members have found it a helpful starting place to draft clear rules. Judge Furman specifically mentioned using the *Guidelines*’ recommendation to break up rules into smaller portions so that only one idea appears in each section. He offered that tips like this provide structure and guidance to the subcommittee’s work. The committee unanimously approved the subcommittee using the *Guidelines*.

A committee member asked if there was a projected date that the subcommittee will finish its work. Judge Furman indicated that the subcommittee was still in the early stages of its work and there’s no projected completion date yet, but the committee is moving faster each meeting.

D. Proposed ICWA Rules

Judge Furman reports that the ICWA subcommittee is almost finished with its work. The subcommittee has been through the rules once to complete a draft, and he anticipates going over it one more time. He expects the second review to go quickly, unless a member raises an issue that needs more thorough review. He stated that the subcommittee views these rules as a subset of the Juveniles Rules (though, he notes that the rules were drafted to incorporate non-Children's Code case types like probate and domestic relations). Because ICWA is most intensely applicable to juvenile case types, the subcommittee feels it's the appropriate home. Justice Gabriel provided some historical context on the issue: the committee had considered making the ICWA committee its own standing committee but decided against that approach for efficiency (because a standing committee requires a separate order from the Chief, a separate charge, separate staffing, etc.). Judge Furman also mentioned that there are certiorari cases before the U.S. Supreme Court, which may impact ICWA and that it may be appropriate to keep an ad hoc version of the ICWA subcommittee around.

IV. New Business

A. Records Policy

Justice Gabriel noted that this arose because a chair retired from a different rules committee and left boxes of committee documents to be managed by the library, which caused the court to reflect on where this information goes and who oversees it. The court also would like a better understanding of what records it has (and where they are) in case there is a public information request. And committee records can be important in future cases where interpretation of a rule is at issue. The committee agreed to set up a subcommittee to look at the issue and develop a policy. Judge Welling, J.J. Wallace, Clancy Johnson, Judge Meinster, and Terri Morrison volunteered for the subcommittee. Justice Gabriel mentioned that the civil rules committee is also looking at the issue and that Judge Jones is coordinating that effort. Judge Welling indicated that he will reach out to Judge Jones, so as to avoid duplicating efforts.

B. Responsibility of the Committee Moving Forward—taking on other areas of the juvenile rules—formalized vision for the future

The chair noted that the committee had previously discussed looking at rules for other kinds of juvenile cases (not just D&N cases). The chair asked committee members to list the things rules may need to cover in the near-term future:

- 1) Reorganization of Article 2, Title 19
 - [SB21-059](#) Signed effective October 1, 2021.

- The committee noted that any cross-reference to title 19, article 2 in the C.R.J.P. would need to be updated. See C.R.J.P. 2.2 (a); 3(a); 3.1(a); 3.5(a) & 3.7(a)–(g).
- The committee also noted that the detention hearing standard of C.R.J.P. 3.7 needs updating to conform with the Juvenile Justice Reform Act.

2) [HB 21-1101](#) Open Adoptions

- Melanie Jordan from ORPC initially received many questions about procedural issues related to the new open adoption scheme. Questions have died down recently, but she is uncertain if the procedural kinks have been worked out or if she's just not hearing about the issues. The committee briefly touched on this issue at a previous meeting and decided to wait to act for (1) new committee members and (2) time to go by so that some cases can go through the process, which should shed light on what needs clarification by rule. Traci Engdol-Fruhwirth explained that she just got her first case (in Arapahoe County) touching on this issue and she will be happy to provide feedback about the process.

3) New OCR Legislation on client-directed representation for children over 12 ([HB22-1038](#)). Portions of this bill may impact Youth in Transition (YT) cases, in addition to D&N cases. The bill provides that children with diminished capacity may qualify for a GAL in addition to counsel. There seems to be some questions about how a court determines diminished capacity.

- a. Related to this issue: There are also questions about the role of a GAL when there is also counsel: what does the GAL do? Is the GAL a party?, etc. Many committee members say this is also an issue for adults who have GALs. A committee member indicated that [People in Interest of T.M.S., 2019 COA 136](#) and [In re Marriage of Sorensen, 166 P.3d 254 \(Colo. App. 2007\)](#) offer some guidance, but there are still many questions.

4) Youth in Transition Cases—a clean-up bill will be introduced, which may need to be reviewed by the committee. The bill on client-directed representation also amends some statutes related to YT cases, which may need review.

5) Josefina Raphael-Milliner, from CASA, indicated that CASA is running a clean-up bill to make sure that it's clear that "youth" qualify for CASA services. She indicated that it has not been the practice to remove CASAs from cases once a child turns 18, but the bill will clarify this.

- 6) The chair indicated that, given the proliferation of legislation in juvenile cases, it may make sense to have a standing legislative subcommittee to keep an eye on legislation so that the committee can more nimbly respond to changes.
- 7) After the meeting, a member emailed that it may be a good idea for the committee to look at rules around using Webex for hearings.

Given all these issues, a consensus was reached to form a subcommittee to analyze these issues, prioritize them, and make recommendations on what the committee should focus on in the future. One committee member suggested looking at the order with the committee's charge for guidance. The chair, Anna Ulrich, Josefina Raphael-Milliner, Judge Loew, Melanie Jordan, Clancy Johnson all volunteered to work on this subcommittee, which Judge Welling will chair.

V. Adjourn

Next meeting, April 1, 2022 at 9 AM via Webex.

Respectfully Submitted,

*J.J. Wallace
Staff Attorney, Colorado Supreme Court*