

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of July 27th, 2018 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:04 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:

Name	Present	Excused
Judge Karen Ashby, Chair	X	
David P. Ayraud	X	
Magistrate Howard Bartlett	X	
Jenny Bender		X
Jennifer Conn	X	
Sheri Danz	X	
Traci Engdol-Fruhworth		X
Judge David Furman		X
Ruchi Kapoor	X	
Andi Truett for Shana Klock	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
Pam Wakefield	X	
Chief Judge Jeffrey Wilson		X
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Attachments & Handouts:

(1) Draft Minutes of the 5/4/18 meeting

(2) Permanency Planning Rule & Notice Proposal

a. *People in Interest of S.L.*, 2017 COA 160

b. *People in Interest of H.K.W.*, 2017 COA 70

- (3) Email from Ruchi Kapoor Re Ineffective Assistance of Counsel Group
- (4) Termination Subcommittee Proposal
- (5) Email from Judge Freyre Re Plain Error Review
 - a. Crim. P. 52
 - b. C.R.C.P. 61
- (6) Email from Judge Freyre Re C.R.C.P. 54(b) certification
 - a. *People in Interest of R.S.*, 2018 CO 31
- (7) Termination proposed forms:
 - a. Notice of Hearing
 - b. Advisement
 - c. Pre-trial Conference Order

II. Chair's Report

- A. The May 4, 2018 minutes were approved without amendment or objection.
- B. Lunch will arrive at around 11:45 PM
- C. The next meeting will be Friday, September 14th at 9 AM. The meeting will be held in room 2B, which is on the second floor between the court building and the tower building. To reach the conference room, take the elevators in the tower building to the 2nd floor and then follow the signs.

III. Old Business

- A. Permanency Planning Proposal

One committee member questioned including the reference to the federal statute on OPPLA (42 U.S.C. § 675a(a)(2)(A)) in the notice. The subcommittee included the reference because that requirement is often overlooked. The committee decided to leave the language parroting the federal statute but took out the specific cite to the statute. It was thought that avoiding statutory citations prevents later cross-reference problems if the statute is moved or changed.

The committee would like the rule to specifically address the issue of “developmentally appropriate” and have the rule reflect what to do if the child is a baby.

The committee does not like the phrase “speak with a child separately,” and discussed using “in camera” instead. After discussion, the committee agreed that the phrase “speak with the child separately” comes from the statute, section 19-1-106(5), and has been recently addressed in two cases. Thus, it has become its own term of art.

The committee members questioned who gets the transcript of an in camera hearing and expressed concern that, years later, a transcript could be inappropriately released. Terri Morrison pointed out that CJD 05-01 controls access to court records and JV cases are not available to nonparties.

The committee suggested drafting a comment (1) noting that case law has declined to extend the UMDA statute, section 14-10-126(1), C.R.S. (2017) to D&N cases and (2) referring to CJD.

IV. New Business

A. Report from Ineffective Assistance of Counsel Group-Ruchi Kapoor

Ruchi explained that the group she was working with had substantively productive discussions, but they were split on how they should proceed. Half the group wanted to start drafting a rule; the other half wanted further discussions before committing to a rule. Ruchi asked to be put on the agenda to get guidance from the committee as to whether her group should move forward with their work and, if so, what form their work should take (drafting a rule; drafting a report).

She explained that her group had worked from an ALR article and a law review article each examining the ways courts have addressed ineffective assistance of counsel claims in the D&N context. There are two main approaches: (1) the direct appeal approach and (2) the C.R.C.P. 60 approach. She said most states, like Colorado's current case law, follow the direct appeal approach. Most IAC claims in Colorado are resolved because the parent fails to show prejudice. She related a few examples of what other states do differently from Colorado that address difficulties appellate counsel face in raising IAC claims on direct appeal such as allowing the submission of new evidence related to the IAC claim to the appellate court.

The chair asked the committee members if they believed they had enough information to vote on whether the group should continue working towards drafting a rule or not. The committee members unanimously believed they had sufficient information to vote on whether to continue the group. The committee voted 1-15 against the group continuing its work. The chair thanked the group chair for her work and for presenting the different viewpoints to the committee. The chair asked the group chair to pass along the thanks of the committee to the group members.

B. Termination Chief Judge O'Hara, Magistrate Bartlett, and Sheri Danz

Chief Judge O'Hara began by stating that the subcommittee held several discussions, but they did not believe that any termination-specific rules needed to be drafted given the committee's decision not to adopt rules re-stating statutes or explaining case law. After a brief discussion about whether a rule regarding children speaking with the court at termination (similar to the permanency hearing rule), the committee decided that it was unnecessary. Chief Judge O'Hara said that if any committee member feels like a particular rule would be helpful, email him and let him know.

The subcommittee did think that forms may be helpful, so they provided forms for: advisement, notice, and a pretrial conference order.

The proposed advisement could be an oral advisement by the court or a written advisement-the subcommittee's goal was to provide a comprehensive list of everything that could be included in an advisement. The committee discussed the individual advisements and felt that language regarding confidential communications with an expert and the right to prevent the expert from testifying should be removed because they may not be consistent with case law.

The committee felt there was no need for a sample motion to be included with the notice of termination hearing. The committee rephrased the notice to conform to the new procedure in section 19-3-607 for appointing experts (appointments go through ORPC instead of through the court).

The committee felt that the pretrial conference order should be retitled "Case Management Order-Termination Hearing" to conform to the discovery/disclosure rule case management order applicable throughout a D&N case. The committee cross-referenced the discovery/disclosure rules and noted that those rules would guide the termination hearing and there was a suggestion that, if the committee was to adopt a termination rule, it should include: an advisement, a reminder about ICWA, and a reminder for parties to look back at the discovery/disclosure rule and sample case management order.

C. Plain error review

The chair asked the committee if there was a need for a rule setting out a standard of review and what that standard would be. The committee reached no consensus on this issue and did not feel it had enough information. The chair asked the committee to continue to think about the issue until the next meeting; J.J. Wallace will research what other states do and provide more information to the committee at the next meeting.

D. C.R.C.P. 54(b) Certification

After briefly discussing whether the rules should include some sort of mechanism like C.R.C.P. 54(b) certification and noting that the supreme court specifically did not address C.R.C.P. 54(b)'s application in *People in Interest of R.S.*, 2018 CO 31, the committee decided to take no further action on this agenda item.

V. Adjourn

Judge Ashby made some closing remarks about future planning. She wants the committee to start thinking about the things we need to do to wrap up the dependency and neglect rules. These include the subcommittees thinking about comments that need to be included with rules. J.J. Wallace will email subcommittee chairs references from past minutes where the committee thought a comment might be appropriate. Judge Ashby also suggested there may be some work done via email in the future.

The Committee adjourned at 1:48 PM.

Respectfully Submitted,
J.J. Wallace