AGENDA
COLORADO SUPREME COURT
RULES OF JUVENILE COMMITTEE

Friday, October 3, 2025, 9 a.m.
Videoconference Meeting via Webex

I. Call to Order

II. Chair's Report

A. Minutes for the June 6, 2025 meeting. **[pages 2–4]**

B. Any Feedback on Rules

III. Present/New Business

A. Adopting Rule Change 2025(15) (Crim. P. 24(d)(5)) for C.R.J.P. (email from Z) **[pages 5–13]**

IV. Old Business

A. Discovery and Disclosures Annual Review Subcommittee (update)

B. ICWA Annual Review Subcommittee (update)

C. Truancy Rules Subcommittee (update)

V. Future Meetings (first Friday of even months): December 5th; February 6th; April 3rd.

VI. Adjourn

Colorado Supreme Court
Rules of Juvenile Procedure Committee
Meeting Minutes: June 6, 2025

I. Call to Order

A quorum being present, the Colorado Supreme Court Rules of Juvenile Procedure Committee was called to order on June 6, 2025 by the Chair, Judge Craig Welling, at around 9 a.m. via videoconference.

The following members were present at the meeting:

Judge Craig Welling; David Ayraud; Jerin Damo; Traci Engdol-Fruhwirth; Magistrate Randall Lococo; Judge Gail Meinster; Judge Pax Moultrie; Z Saroyan; Anna Ulrich; Pam Wakefield; and Abby Young.

The following non-voting members were also present: Richard L. Gabriel, liaison justice; Terri Morisson; and J.J. Wallace.

The following members were absent from the meeting:

Judge Karen Ashby; Judge Priscilla J. Loew; Professor Colene Robinson; Angela Rose; Lisa Shellenberger; and Judge Theresa Slade.

The following materials were used during the meeting:

1. Rule Change 2025(10)
2. HB25-1204 (Colo. ICWA-Final Act)

II. Chair's Report

A. Minutes for the April 4, 2025 meeting.

The minutes were approved without amendment.

B. Rule Change 2025(10) effective for cases filed on or after July 1, 2025.

The Chair asked if any members had received further feedback on the new rules. No member had heard any comments. Justice Gabriel believes the lack of comment is an unbelievable testament to the hard work of the committee and noted the absence of comments during the public comment period—not even nits—which speaks to the work and professionalism that went into the effort. Various members indicate that trainings are scheduled and underway. OCR had one training already, and there were over 200 participants.

Justice Gabriel suggested that committee members work on an article to publish in the *Colorado Lawyer*. Anna Ulrich indicated that she is updating OCR's Guided Reference in Dependency with the new rules, so she has a good sense of what is important to highlight. She volunteered to spearhead an article. Z and Judge Welling offered to help too. And Justice Gabriel offered the assistance of his law clerks, if they were needed.

III. New Business

(none)

IV. Old Business

A. Discovery and Disclosures Annual Review

Z, Anna, David, and Judge Welling are meeting and identifying issues with the rule. In reviewing feedback, they are distinguishing between one-off incidents/people not working well together with structural problems that evidence larger issues. The list of issues is so far is pretty short. Justice Gabriel suggested the subcommittee also seek feedback on whether the rule was clear. If something is unclear, we should change it.

B. ICWA Rules Annual Review

Judge Moultrie, chair of the subcommittee, recounted that the subcommittee met several weeks ago. The consensus of the subcommittee was that people were aware of the rules, at least in the D&N context, and were also aware of the then-pending Colorado ICWA bill. The subcommittee decided to meet next after the bill had passed. A member indicated that the law was enacted without a safety clause, so it becomes effective at 12:01 a.m. on August 6th. Judge Moultrie has created a survey for family law and probate judges to get feedback on the rules in in those areas. Also, Judge Moultrie related that the subcommittee is joining forces with those working on the juvenile benchbook and bench cards in an effort to avoid duplicative work.

C. Truancy Subcommittee

Abby Young, chair of the subcommittee, explained that the project to look into truancy rules has turned out much larger than expected and is expanding organically as they dig in. There are very different practices statewide. Right now, the subcommittee is gathering information. They have put together a survey for judges (and for judges to send to their stakeholders). Responses are due on June 17th. The first impression is that there is a real hunger to talk about truancy issues among judges, lawyers, teams, GALs, CACs, service providers, school districts, etc. A member indicated that, at a recent

training for new magistrates, he also noticed a hunger to talk about others' experiences with truancy cases. The subcommittee is getting good participation from all groups but they need someone from the southwest corner of the state. Anna Ulrich offered to assist with finding a school district participant in that area of the state. Abby cautioned that they were still in the beginning stages and that this effort may take some time. Judge Welling indicated that if the subcommittee notes particularly good members of the subcommittee, we do not have any truancy experts on the main C.R.J.P. rules committee, and Abby should refer them for possible appointments to the committee.

V. Future Meetings

The next meeting is August 1st.

Additional meetings are scheduled for: October 3rd; December 5th.

VI. Adjourn

The committee meeting adjourned at around 9:40 a.m.

wallace, jennifer

From: Zaven Saroyan <zsaroyan@coloradoorpc.org>
Sent: Tuesday, August 26, 2025 12:18 PM
To: wallace, jennifer
Subject: [EXTERNAL] Rule Change

J.J.,

There appears to be a rule change pending for Colorado Rule of Crim Pro 24(d), peremptory challenges, and we are thinking it is worth the committee discussing whether it makes sense to adopt in the CRJP. The rule change is located here: https://www.coloradojudicial.gov/sites/default/files/2025-06/Rule%20Change%202025%2815%29.pdf.

Can we add this to the agenda?

Best regards,

Z-

Zaven ("Z") Saroyan

Appellate Director

Office of Respondent Parents' Counsel

1300 Broadway, Suite 340

Denver, CO 80203

719-421-6767

Book here to book a consult.

RULE CHANGE 2025(15)

COLORADO RULES OF CRIMINAL PROCEDURE

Rule 24. Trial Jurors

(a) - (c) [NO CHANGE]

(d) Peremptory Challenges.
(1) - (4) [NO CHANGE]

(5) **Improper Bias (Including Unconscious or Implicit Bias).** This rule pertains to peremptory challenges against a prospective juror whom the parties stipulate or the trial court finds is more likely than not a member of a racial or ethnic minority group. The exclusion of prospective jurors based on race or ethnicity is prohibited. When a party claims that the opposing party's peremptory challenge is rooted in improper bias (including unconscious or implicit bias), the court must conduct a three-step analysis as follows:

(I) **Objection.** A party may object to the use of a peremptory challenge to raise the issue of improper bias. Any discussion related to the objection must be conducted outside of the hearing of the jury panel. Additionally, the objection must be made before the prospective juror is excused, unless the objecting party shows that the objection stems from new information discovered after the prospective juror's excusal.

(II) **Prima Facie Case.** When addressing an objection to a peremptory challenge under this rule, the court must first determine whether the objecting party has made a prima facie showing that the peremptory challenge was based on the prospective juror's race or ethnicity. It suffices for such a showing that the totality of the relevant circumstances gives rise to an inference of racial or ethnic motivation. The court may raise an objection to a peremptory challenge on its own, and such objection will constitute the requisite prima facie showing.

(III) **Response and Rebuttal.** If the court finds that the objecting party has failed to make the requisite prima facie showing, the court must overrule the objection and allow the peremptory challenge. Conversely, if the court finds that the objecting party has made the requisite prima facie showing, the court must direct the party exercising the peremptory challenge to articulate a race- and ethnicity-neutral reason for the challenge. The party exercising the peremptory challenge must not attempt to articulate such a reason unless directed to do so by the court. The court must then determine whether the given reason is, on its face, race- and ethnicity-neutral. In assessing such neutrality, the court may not consider the stated reason's plausibility or persuasiveness; rather, the court must assume the stated reason is true and then determine whether, as stated, the reason is neutral or is instead based on the prospective juror's race or ethnicity. If the court finds that the stated reason is rooted in improper bias, it must sustain the objection. But if the court determines that the proffered reason is, on its face, race- and ethnicity-neutral, it must give the objecting party an opportunity to rebut the stated reason. The objecting party must not attempt to rebut the given reason for the peremptory challenge unless directed to do so by the court.

(IV) **Final Determination.** The court must evaluate the persuasiveness of the reason given to justify the peremptory challenge in light of any rebuttal offered and the totality of the relevant circumstances. If the court finds that the objecting party has met its burden of establishing purposeful discrimination by showing, by a preponderance of the evidence, that the peremptory challenge was substantially motivated by race or ethnicity, the court must disallow the peremptory challenge and direct the prospective juror to remain on the jury panel. However, if the court finds that the objecting party has not met its burden, the court must allow the peremptory challenge and excuse the prospective juror. In ruling on the record, the court may consider a party's unconscious or implicit bias, as both conscious bias and unconscious or implicit bias may contribute or lead to purposeful discrimination, but the court must guard against engaging in speculation. Express demeanor and credibility findings, though not required, are the preferred practice.

(V) **Circumstances Considered.** In making its final determination, the court must consider any relevant circumstances, including but not limited to the following, which may reflect that the peremptory challenge was substantially motivated by race or ethnicity:

(A) the number and types of questions posed to the prospective juror, including whether the party exercising the peremptory challenge failed to question the prospective juror about the reason for the challenge;

(B) whether the party exercising the peremptory challenge asked significantly more questions or different questions of the prospective juror against whom the peremptory challenge was used in comparison to questions that party asked of other prospective jurors;

(C) whether other prospective jurors provided similar answers or made similar statements but were not the subject of a peremptory challenge by the party exercising the peremptory challenge;

(D) if the basis of the peremptory challenge concerns the prospective juror's alleged bias against law enforcement or the criminal justice system, whether the party exercising the peremptory challenge explored the issue through questioning or rehabilitation, and whether that party challenged the prospective juror for cause on that basis;

(E) whether the justification for the peremptory challenge might be disproportionately associated with race or ethnicity. Such justification may include, but is not limited to, the prospective juror:

a. having had prior contact with law enforcement,
b. having a close relationship with others who have had contact with law enforcement,
c. living in a high-crime neighborhood, or
d. not being a native English speaker;

(F) if the basis of the peremptory challenge concerns the demeanor, attitude, or body language of the prospective juror, whether such demeanor, attitude, or body language was contemporaneously brought to the attention of the court or was corroborated by the court's own observation or that of opposing counsel; and

(G) whether the party exercising the peremptory challenge has used peremptory challenges disproportionately against a given race or ethnicity in the present case or in past cases.

The court need not make a finding as to each relevant circumstance. Neither the existence nor the absence of any particular relevant circumstance is determinative.

COMMITTEE COMMENT

The rule is changed to permit, but not to require, the court to allow the simultaneous questioning of more than 12 potential jurors and one or two alternate jurors at one time. Further, the rule permits, but does not require, the court to allow the exercise of peremptory challenges, in writing, in its discretion, as is done in civil cases. This rule change is intended to apply to both district and county court criminal cases.

Nothing in subsection (d)(5) alters *Batson v. Kentucky*, 476 U.S. 79 (1986), or its application in Colorado jurisprudence. Subsection (d)(5) is simply intended to provide further guidance when a peremptory challenge allegedly seeks to improperly exclude a prospective juror based on race or ethnicity. Any provisions in this subsection addressing unconscious or implicit bias, including specifically part (d)(5)(IV) ("Final Determination") and part (d)(5)(V) ("Circumstances Considered"), are not inconsistent with *Batson*, as both conscious bias and unconscious or implicit bias may contribute or lead to purposeful discrimination. *See generally Batson*, 476 U.S. at 106 (Marshall, J., concurring) ("A prosecutor's own conscious or unconscious racism may lead him easily to the conclusion that a prospective black juror is 'sullen,' or 'distant,' a characterization that would not have come to his mind if a white juror had acted identically."); *see also State v. Saintcalle*, 309 P.3d 326, 338 n.8 (Wash. 2013) (plurality opinion) (noting that "purposeful discrimination" arguably "already encompasses unconscious bias" because "the 'purposeful discrimination' requirement was never intended to be a proxy for . . . anything resembling a conscious mens rea, but rather a signpost for distinguishing between discriminatory purpose and disproportionate impact"; and further observing that both the United States Supreme Court's jurisprudence and scholarship support the proposition that *Batson*'s "purposeful discrimination" requirement means "not that the state's attorney need be found intentionally racist," but rather "that racial bias (conscious *or* unconscious . . .) be the source of any disparate impact." (citation omitted)), *abrogated in part on other grounds by City of Seattle v. Erickson*, 398 P.3d 1124 (Wash. 2017); Ralph Richard Banks & Richard Thompson Ford, *(How) Does Unconscious Bias Matter?: Law, Politics, and Racial Inequality*, 58 Emory L. J. 1053, 1090–93 (2009) (concluding that "discriminatory purpose" includes unconscious or implicit bias under current equal protection jurisprudence).

(e) - (g) [NO CHANGE]

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(e) - (g) [NO CHANGE]

Amended and Adopted by the Court, En Banc, June 26, 2025, effective January 2, 2026.

By the Court:

Carlos A. Samour, Jr.
Justice, Colorado Supreme Court