

## **AGENDA**

### **COLORADO SUPREME COURT ADVISORY COMMITTEE ON RULES OF PROBATE PROCEDURE**

Thursday, March 26, 2026, 2:00 p.m.  
Via WebEx

- I. Call to Order
- II. Committee member introductions
- III. Approval of May 28, 2021, minutes
- IV. Announcements from the Chair
- V. New Business
  - a. HB25-1204 and ICWA Rules – Proposed Changes to Rules 1 and 12
  - b. Subcommittees Discussion
  - c. JDF 998/999 – Update Process for Small Estate Affidavit
- VI. Adjourn

**Colorado Supreme Court Advisory Committee on the Rules of Probate Procedure  
May 28, 2021 Minutes**

A quorum being present, the Colorado Supreme Court Advisory Committee on Rules of Probate Procedure was called to order by Judge Anthony Navarro at 1:30 p.m., via videoconferencing software WebEx. Members present or excused from the meeting were:

<b>Name</b>	<b>Present</b>	<b>Excused</b>
Judge Anthony J. Navarro, Chair	X	
Shari Caton	X	
Judge Mary Deganhart		X
Judge Allison P. Ernst		X
Kristabel Garcia	X	
Emily Gregory	X	
Michael Holder	X	
Magistrate H. Clay Hurst	X	
Michael Kirtland	X	
Judge Elizabeth Leith	X	
Connie Lind	X	
Judge Mark MacDonnell	X	
Marcie McMinimee	X	
Amber Roth	X	
Charles Spence	X	
Leia Ursery		X
Casey Williams	X	
<b>Non-voting Participants</b>		
Justice Richard L. Gabriel, Liaison	X	
SCAO Representative (vacant)		

**I. Attachments & Handouts**

A. May 28, 2021 agenda packet

**II. Announcements from the Chair**

Justice Gabriel welcomed and introduced the new Committee Chair, Judge Anthony Navarro, of the Colorado Court of Appeals. Chair Judge Navarro in turn welcomed everyone and the committee introduced themselves.

**III. Business**

A. **Electronic Wills – New Rule 57 and Forms 910, 913, 920, 921, 924, 926, XXX**

Drafting Subcommittee Chair Judge Leith shared that the Subcommittee drafted the proposed new rule and comments, and the result is what the Committee sees today. The Committee discussed its overall approval of the rule and then discussed a few minor, friendly amendments. The Committee decided to remove the initial reference to codicils. It also decided to alter the first comment to provide education on where to find the law rather than state the law itself. The Committee did not have any edits to the forms.

**B. Rule 40**

Marcie McMinimee introduced this rule. The Committee had no changes.

**C. Forms 813, 822, 824, 825, 826, 827, 828, 829, 830, 834, 835, 843, 850, 877, 882, 885, 897, 916, 919 (new), 922, 940, 990, and 991**

Forms Subcommittee Chair Connie Lind introduced the proposed changes to the forms.

One member mentioned a recent a supreme court decision on the Indian Child Welfare Act (ICWA) and queried whether that decision could impact these forms. Ms. Lind reported that the ICWA language came from a separate group focused specifically on ICWA. With this explanation, the members were satisfied with the language.

One member reported a typographical error in JDF 835. Ms. Lind will fix this.

Because making changes to forms creates a significant amount of work for litigants and the court system, the Committee discussed the utility of adopting small changes to forms versus waiting until there are larger changes. The Committee ultimately decided to go ahead with the changes since some changes were substantive.

One member also noticed that a few titles of the forms in footers did not match the title of the forms. Those will be fixed.

A motion and second were taken to submit the packet to the supreme court as discussed today, along with the accepted friendly amendments. This passed unanimously.

Chair Judge Navarro thanked everyone for their hard work and will provide updates when they occur.

**IV. Future Meetings**

TBD

The Committee adjourned at 3:40 p.m.

From: gabriel, richard  
Sent: Thursday, March 5, 2026 4:51 PM  
To: jones, jerry; welling, craig; kuhn, eric  
Cc: michaels, kathryn; wallace, jennifer; moultrie, pax  
Subject: Civil, Juvenile, and Probate Rules Committees: Proposed Rules to implement new ICWA rule.  
Attachments: Letter to Rules Committees - Proposed Rule - Applicability of the ICWA & CO ICWA Final 03.02.26.pdf

Dear Colleagues:

Attached please find information regarding a revised ICWA Rule, which the Court today approved in principle, with an effective date of June 1. On page 2 of the attached, you will see that the ICWA Rules Subcommittee has asked the Civil, Juvenile, and Probate Rules Committees to adopt a “referral statement,” with suggestions as to where the statement would go.

The Court thinks this is a good idea, and we are asking the Civil, Juvenile, and Probate Rules Committees to discuss this and tee it up for a very prompt vote (email vote may be needed). Ideally, we’d have responses from your Committees within 30 days at the latest.

Thanks for your attention to this. Please don’t hesitate to reach out with any questions.

Best,

Rich

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Colorado Supreme Court  
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(he, him, his)

**To:** Justice Gabriel, on behalf of the Probate, Family Law and Civil Rules Committees

**From:** Pax Moultrie, Chair, ICWA Rules Subcommittee, Rules of Juvenile Procedure Committee

**Date:** March 2, 2026

**Re:** Proposed Amendment to the ICWA Rules of Procedure

HB25-1204, the Colorado Indian Child Welfare Act (CO-ICWA), became effective in August 2025 and created a new Article 1.2 in Title 19. The CO-ICWA codified existing federal ICWA law and created additional, significant protections for Indian children under state law. The ICWA Rules Subcommittee has been meeting since early 2025 to consider recommendations for amendments to the ICWA rules of procedure that became effective in January 2024 in light of the new substantive body of law created by HB25-1204. After significant thoughtful discussion, the Subcommittee submitted its recommendations to the Colorado Supreme Court. On November 6, 2025, the Court issued an administrative order suspending the ICWA Rules, pending further order of the Court. *See* Rule Change 2025(23). The Court also directed this Subcommittee to report back within 90 days its recommendation regarding what further action should be taken.

The Subcommittee has continued to meet regularly and work diligently to determine next steps. As a result of the efforts of its members, the Subcommittee recommends that:

- Chapter 28.3 of the Colorado Court Rules, where the suspended ICWA Rules are located, be maintained to facilitate future adoption of appropriate ICWA/CO-ICWA rules;
- The formal title of Chapter 28.3 be amended to “Rule of ICWA Procedure” from “Rules of ICWA Procedures”;

- the currently suspended ICWA Rules be replaced with a singular rule, entitled “Applicability of the Indian Child Welfare Act and the Colorado Indian Child Welfare Act” (see Attachment A); and
- a “referral statement” that directs the court and parties to Chapter 28.3 be included in the bodies of rules applicable to practice areas in which the ICWA/CO-ICWA might arise.
  - The proposed referral statement is:
    - Any action involving a “child custody proceeding, as defined in 25 U.S.C. §§ 1903, 1912 and section 19-1.2-103(2), C.R.S., must proceed in accordance with the Rules of ICWA Procedure, as contained in Chapter 28.3 of the Colorado Court Rules.
  - At a minimum, the referral statement should be included in the following rules:
    - Civil Procedure — Ch. 1, R. 1(a), added to the second paragraph; Ch. 2, R. 16.2(a).
    - Probate Rules — Pt. 1, R. 1, added paragraph (d); Pt. 2, R. 12, added paragraph (c).
    - Juvenile Rules — Pt. 1, R. 1(b); Pt. 3, R. 3.8; Pt. 4, R. 4.1(a); Pt. 6, R. 6(a), added subparagraph (8).

We look forward to your feedback regarding next steps.

Sincerely,



Pax Moultrie

Judge, Colorado Court of Appeals

ICWA Rules Subcommittee Chair

## Applicability of the Indian Child Welfare Act and the Colorado Indian Child Welfare Act

- a. **Purpose.** This rule furthers the consistent application and compliance with the federal Indian Child Welfare Act (ICWA) and the Colorado Indian Child Welfare Act (CO ICWA). See 25 U.S.C. §§ 1901 to -1963; §§ 19-1.2-101, C.R.S. to -132
- b. **Scope.**
  1. This rule applies to all “child custody proceedings,” including dependency and neglect cases and certain other juvenile, probate, domestic relations, and delinquency cases, as defined in 25 U.S.C. §§ 1903, 1912 and section 19-1.2-103(2), C.R.S.
  2. Child custody proceedings include but are not limited to:
    - A. guardianships;
    - B. parentage determinations;
    - C. allocations of parental responsibility to a non-parent; and
    - D. adoption actions involving a non-parent, including any private adoption action. 25 U.S.C. § 1903; §§ 19-1.2-103(2), 19-1.2-104 – 107, C.R.S.
- c. **Inquiry.**
  1. At the beginning of every child custody proceeding, the court must inquire whether it has reason to know that the child at issue is an Indian child, or whether the participant has information that is relevant to determining whether the child is an Indian child. See 25 C.F.R. §23.107; § 19-1.2-107(2)-(3), C.R.S.
  2. The form of the inquiry shall be as set forth in § 19-1.2-107(2)-(3), C.R.S.
- d. **Implementation.**
  1. If the court determines it has reason to know a child is an Indian child as defined in the CO ICWA, it must treat the child as an Indian child and apply the ICWA and CO ICWA unless and until the court determines on

the record that the child does not meet the definition of an Indian child. See 25 C.F.R. § 23.107; § 19-1.2-107(3)(b), (6), C.R.S.

2. If the Court receives information that the child may have Indian heritage, but the Court lacks sufficient information to determine that the child is an Indian child, the court shall direct the petitioning or filing party to exercise due diligence to gather additional information. See § 19-1.2-107(4), C.R.S.

October 5, 2025

Dear Justice Gabriel,

Thank you for your assistance with adding this matter to the Colorado Supreme Court’s administrative agenda. As you are aware, Colorado’s ICWA rules became effective in January 2024 after significant efforts over several years from members of the ICWA Rules Subcommittee. As you are also aware, HB25-1204 – the Colorado Indian Child Welfare Act (CO-ICWA) – became effective in August 2025 and created a new Article 1.2 in Title 19. The CO-ICWA codified existing federal ICWA law and created additional, significant protections for Indian children under state law. The subcommittee applauds the legislature’s efforts in getting this legislation passed.

Several members of the ICWA Rules Subcommittee were involved in informing and tracking that legislation. Once it became apparent that the CO-ICWA would become law, it became clear that this subcommittee would need to reconvene to consider the impact of the CO-ICWA on the existing ICWA rules. A primary focus of the subcommittee’s discussion has been trying to identify the purpose that the rules currently serve or could serve in the future given the newly enacted legislation. In short – where do the ICWA rules go from here?

As we discussed with you on October 28, 2025, the subcommittee would like to consider either suspending or repealing the existing ICWA rules. Because the CO-ICWA created a new substantive body of law, the ICWA rules as they currently exist are at best are misleading because they are incomplete given the new statutory authority, and at worst may conflict with the new statutes. To aid your discussion with the other justices regarding which avenue – suspension or repeal – might be more appropriate under the circumstances, the subcommittee has created this memo for your consideration listing the arguments in favor of each avenue:

<u>Suspension of the ICWA Rules</u>	<u>Repeal of the ICWA Rules</u>
We can suspend the rules now, while studying the impact of the CO-ICWA as it is implemented into practice, and repeal later if necessary	Unclear what we would be studying; the impact of the CO-ICWA needs to play out over time and we don’t want to improperly influence amendment of the current rules or creation of new rules based on the subcommittee’s “echo-chamber” (i.e., creating rules for perceived, rather than experienced, issues)

<p>The rules serve as a research resource for practitioners and courts; there may be use in not repealing the rules because they can serve as a reminder that ICWA applies in non-D&amp;N case types, especially since the new statutes are all in Title 19</p>	<p>Practitioners/courts should be looking to applicable ICWA statutory law first, rather than the rules, regardless of practice type</p>
<p>Potential to develop rules of procedure where procedure was not identified in statute by the CO-ICWA (e.g., regarding Qualified Expert Witnesses, post adoption agreements/cultural compacts)</p>	<p>Additional procedures and/or notice that ICWA must be complied with, along with reference to Title 19, could be incorporated into other existing rules (e.g., general civil, probate, juvenile) without having a standalone body of ICWA rules</p>
<p>Without going through entire rulemaking process again, suspension would allow the opportunity to assess whether there are sections of Article 1.2 in Title 19 that could/should be cross-referenced in the existing ICWA rules, pending potential future amendments</p>	<p>Repeal of the existing rules is likely more appropriate if aligning the rules with the CO-ICWA statutes would require significant revision or entirely rewriting rules anew</p>

Please let us know what the next step in this discussion is. I am available to answer, on behalf of the subcommittee, any additional questions for you or the other justices to the best of my ability. Likewise, if the justices would like additional input from members of the subcommittee, please advise of the most appropriate path to provide that information. As a reminder, the ICWA Rules Subcommittee meets next on November 12, 2025, and we hope to decide how to move forward at that time. We look forward to hearing back from you.

Sincerely,



Pax Moutrie  
 Judge, Colorado Court of Appeals  
 ICWA Rules Subcommittee Chair

## Rule 1. Scope Of Rules--How Known and Cited

(a) to (c) [NO CHANGE]

(d) Any action involving a “child custody proceeding,” as defined in 25 U.S.C. §§ 1903, 1912 and section 19-1.2-103(2), C.R.S., must proceed in accordance with the Rules of ICWA Procedure, as contained in Chapter 28.3 of the Colorado Court Rules.

## **Rule 12. Petitions Must Indicate Persons Under Legal Disability**

**(a) to (b) [NO CHANGE]**

(c) Any action involving a “child custody proceeding,” as defined in 25 U.S.C. §§ 1903, 1912 and section 19-1.2-103(2), C.R.S., must proceed in accordance with the Rules of ICWA Procedure, as contained in Chapter 28.3 of the Colorado Court Rules.

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