AGENDA
COLORADO SUPREME COURT
RULES OF JUVENILE PROCEDURE COMMITTEE
Friday, June 7, 2024, 9:00 AM
Videoconference Meeting via Webex

I. Call to Order

II. Chair's Report
- A. Welcome New Members: Judge Pax Moultrie; Lisa Shellenberger; Angela Rose & Jerin Damo
- B. Minutes of 2/2/2024 meeting **[pages 2–4]**
- C. C.R.J.P. 4.6 was adopted by the supreme court effective July 1, 2024.

III. New Business
- A. Drafting Subcommittee (Judge Welling)
  1) Civil Rules **[page 5]**
  2) Motions Rule **[page 6]**
  3) Permanency Rule **[pages 7–11]**
  4) Post-Termination Rule **[pages 12–14]**
- D. Judicial's New Website (J.J.)
  1) Launch on 6/11/2024 with a new URL: coloradojudicial.gov

IV. Old Business
- A. Requiring Ex Parte Emergency Removal Hearings to be on the Record (Z Saroyan)-any updates?
- B. New Legislation Subcommittee-any updates?

V. Adjourn

Upcoming Meeting Schedule: *August 9; October 4; December 6*

Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of February 2, 2024 Meeting (Unofficial)

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 AM via videoconference.

Members present for the meeting were: Judge Craig Welling, Chair; Judge (Ret.) Karen Ashby; David P. Ayraud; Jennifer Conn; Traci Engdol-Fruhwirth; Magistrate Randall Lococo; Judge Ann Gail Meinster; Zaven "Z" Saroyan; Judge Traci Slade; Anna Ulrich; Pam Wakefield; Abby Young. Justice Richard Gabriel, Liaison; Terri Morrison; and J.J. Wallace were also present as non-voting members.

Members excused from the meeting were: Judge David Furman; Judge Priscilla J. Loew; Trent Palmer; Josefina Raphael-Milliner; Professor Colene Robinson

Meeting Materials:
(1) Draft Minutes of 12/1/2023 meeting
(2) Memo Re Adjudicatory Hearing Rule
(3) Drafting Subcommittee Workplan

II. Chair's Report

A. The 12/1/23 meeting minutes were approved.

III. New Business

A. **Drafting Subcommittee: Memo Re Removing Evidence Section from the Adjudicatory Hearing Rule**

Justice Gabriel recapped the memo to the committee on the issue. He added that he believed this section was a remanent of the committee's choice to provide one-stop shopping and adds that the committee has revisited that choice. He invited other drafting subcommittee members to weigh in. Anna Ulrich mentioned that, although this section is grounded in statutory authority, the subcommittee felt adding these provisions to the rules proved more confusing and harmful because adding them could suggest they be given more significance than warranted.

No one voiced any objection to removing the section. The question was called and the recommendation to remove the section passed unanimously.

B. **April 5th Meeting**

The Chair asked members to raise their hand if the April 5th meeting conflicts with their participation in the convening. Most members present raised their hand, so the April meeting was cancelled.

IV. Old Business

A. C.R.J.P. 4.6 Disclosures and Discovery in Dependency and Neglect Cases

The Colorado Supreme Court has requested written public comments on proposed Rule 4.6 of the Colorado Rules of Juvenile Procedure. Public comments may be submitted in letter format addressed as follows: Colorado Supreme Court, 2 E. 14th Avenue, Denver, CO 80202 or attached as a separate document to an email in Word or PDF format. Comments may be emailed to supremecourtrules@judicial.state.co.us.

B. New Legislation Subcommittee

Anna believed that the purpose of this group was to apply the 1038 subcommittee model to look at recent legislation. She mentioned that there was a bill regarding children's rights this year, but she didn't think it would have much impact on rules. Magistrate Lococo was familiar with legislation being introduced impacting delinquency, especially around current deficiencies with treatment and detention, but was not aware of any other legislation that would impact rules.

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

Z Saroyan explained that he sent an email right before the holidays asking for feedback on recording emergency orders. He indicated that did not get much feedback, so he re-sent the email recently. J.J. forwarded the email to committee members during the meeting. Members should feel free to weigh in. In response, some members described their processes for emergency orders in their jurisdictions.

Z asked if it made sense to do a rule requiring recording if it's during regular business hours and then referring after-hours orders to the best practices teams in the jurisdictions.

One member with rural jurisdiction experience would prefer maintaining flexibility because the ability to record may be difficult. She also didn't want a recording requirement to put children's safety at issue.

Judge Meinster echoed the comments on the logistical difficulty with recording. She inquired about the problem recording would solve. Z indicated that it makes sense that a parent have access to the information provided to secure the emergency order and understood that jurisdictions probably need flexibility.

Terri Morrison wanted the committee to keep in mind that, if recording were a legislative requirement, judicial would put a fiscal note on it because there are

costs involved. She explained that there is not automatic financial availability for something like this.

The Chair suggested continuing the conversation and threw out the idea of a pilot project in a jurisdiction who was willing to take this on.

V. Adjourn

Other announcements: The Child Welfare Appeals group is doing another report soon. Judge Moultrie is taking over the subcommittee on ICWA.

Also, some committee members' terms are ending in June. Those members will be getting an email asking whether you are able to continue on the committee. The committee will also be welcoming new members.

The meeting adjourned around 9:40 AM. The next meeting is June 7th via Webex.

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

Respectfully Submitted,

J.J. Wallace
Staff Attorney, Colorado Supreme Court

TO: JUVENILE RULES COMMITTEE
FROM: DRAFTING SUBCOMMITTEE
RE: INCORPORATION AND REFERENCE TO CIVIL RULES
DATE: JUNE 7, 2024

The Drafting Subcommittee recommends specifically incorporating the Civil Rules of Procedure as follows (emphasis added):

Rule 4.1. Procedure Governed, Scope and Purpose of Rules

(a) Purposes of these Rules.

(1) Dependency and neglect cases are unique civil cases requiring an intricate balance of the important and interrelated rights and interests of parents, legal guardians and/or legal custodians; children and youth; and the government. These rules must be liberally construed to achieve the purposes of the Children's Code.

(2) In light of the purposes of the Children's Code and to avoid unnecessary delay, dependency and neglect cases require a particularized approach, which is reflected in these rules.

(3) *Where not governed by these rules or the procedures set forth in the Colorado Children's Code, dependency and neglect cases must be conducted according to the Colorado Rules of Civil Procedure.*

In multiple places, restating language already appearing in the civil rules became cumbersome where no alterations were needed (e.g., restating the obligations of attorneys under C.R.C.P. 11; restating legal holidays under C.R.C.P. 6; restating the two-pages of C.R.C.P. 121 § 1-15). The subcommittee also felt that practitioners are used to using the civil rules and that the civil rules provide a catchall if a situation not envisioned by the committee arises and there is no juvenile rule. That said, where appropriate, the subcommittee has been tailoring expressly-referenced civil rules to address the needs of dependency and neglect cases, e.g. the motions rule.

TO: JUVENILE RULES COMMITTEE
FROM: DRAFTING SUBCOMMITTEE
RE: MOTIONS RULE
DATE: JUNE 7, 2024

Motions were covered in several rules in the draft: one focusing on pre-trial motions in the pre-adjudication section and two in the adjudication section, one general motions rule and one on summary judgment. The Drafting Subcommittee recommends consolidating them into one rule and using C.R.C.P. 121 section 1-15 as a starting place. The Drafting Subcommittee kept the deadlines and other recommendations made by the committee in the various proposed rules, such as not requiring responses to motions (so motions cannot be deemed confessed), not authorizing replies, and providing special provisions for forthwith or emergency motions.

The subcommittee made two changes. The first removed the sentence stating "Any motions to amend the Petition must be filed no later than 7 days prior to trial unless good cause is shown." Because petitions can be amended to conform to the evidence as late as during trial and because these cases move fast with new information being revealed throughout, setting a deadline for amending petitions seemed undesirable.

The second change is the Drafting Subcommittee recommends staying silent on summary judgment motions. By staying silent, the current status quo will be maintained. The rule now reads as follows:

Rule 4.30. Motions

Any party may apply to the court for relief by motion. Except as otherwise specifically authorized by law, motions will be determined as set forth with C.R.C.P. 121 § 1-15, except that:

(a) Pretrial and Prehearing Motions. Unless otherwise ordered by the court, all pretrial motions must be filed at least 21 days prior to trial or within 7 days of setting trial whichever is later.

(b) Responses. Written responses are not required unless ordered by the court. Except for forthwith or emergency motions described below, any response must be filed within 7 days of the motion or as otherwise ordered by the court.

(c) Replies. A reply in support of motion must not be filed unless ordered or authorized by the court.

(d) Forthwith or Emergency Motions. A forthwith or emergency motion may be filed when there is an issue that requires immediate determination by the court. The movant must state with particularity the need for an immediate determination. Unless a greater or lesser time is ordered by the court, any objection or response must be filed within 72 hours of the filing and service of the forthwith or emergency motion. The movant must call the filing of such motions to the attention of the courtroom clerk as soon as practicable.

(e) Sanctions. Sanctions as provided in C.R.C.P. 121 § 1-15(7) are not authorized in dependency and neglect cases pursuant to § 13-17-102(8), C.R.S.

TO: JUVENILE RULES COMMITTEE
FROM: DRAFTING SUBCOMMITTEE
RE: PERMANENCY RULE & FORM NOTICE
DATE: JUNE 7, 2024

The Drafting Subcommittee recommends revising the proposed permanency rule to simply reference the statute.

The permanency statute is dense and covers varied and important things. The subcommittee felt that highlighting only some of the important aspects of the statute may give those aspects undue weight and not highlighting other aspects of the statute may unintentionally minimize those. Additionally, the section of the proposed rule covering consulting with children or youth has been addressed in the Child and Youth Attendance and Participation Rule, approved by the Committee at the October 6, 2023 meeting.

The subcommittee also recommends leaving out the Notice Form. The supreme court is attempting to get away from including forms as part of rules. To the extent that forms are helpful, SCAO is in a better position than rules committees to quickly change forms if change is needed. Further, no one on the subcommittee knew of problems providing notice of the permanency hearing among the jurisdictions they work in. If the committee feels a form would be helpful, we can refer the issue to SCAO.

PROPOSED NEW PERMANENCY RULE:

Permanency hearing procedures and requirements must be accomplished as set forth in section 19-3-702, C.R.S.

COMMENTS

[1] Permanency hearing procedures and requirements addressed in section 19-3-702, C.R.S., include, but are not limited to, timeframes for hearing, notice, advisements, permanency goals, children and youth consultation, permanent home determinations, contested placement hearings, and parents who are incarcerated.

[2] In cases where there is a deferred adjudication or an informal adjustment, but no adjudication has yet entered, and where the child or youth is placed out of the home, the court should consider permanency within timelines consistent with state and federal laws.

OLD RULE PROPOSAL:

(a) Hearing. The court should schedule the initial permanency hearing at the dispositional hearing.

(b) Notice. For any permanency hearing, the court or its designee must ensure that notice is provided pursuant to section 19-3-702(2)(a), C.R.S. Placement providers must provide notice of the hearing to the child or youth, and the guardian ad litem must ensure that the

child or youth understands the notice to the extent practicable considering the child's or youth's development. The permanency hearing notice must substantially comply with Form ___ of the Appendix of Chapter 28.

(c) Return Home or Adopting One or More Permanency Goals. When proper notice has been provided pursuant to paragraph (b), and the court has timely received the petitioner's permanency plan and provided an opportunity to be heard to the persons present for the permanency hearing, the court must first determine whether the child or youth should be returned to the child's or youth's parent, named guardian, or legal custodian and, if so, the date on which the child or youth must be returned. If the child or youth cannot be returned to the physical custody of the child's or youth's parent or legal guardian on the date of the hearing, the court must enter one or more permanency goals.

(d) Consultation with the Child or Youth. The court must consult with the child or youth in a developmentally-appropriate manner regarding the child's or youth's permanency goal.

(1) To satisfy the requirement of developmentally appropriate consultation, the court may:

(A) speak directly with the child or youth in person, by phone, or by interactive audiovisual device at the permanency hearing;

(B) elicit and consider a written statement from the child or youth, ensuring a copy of the written statement is provided to all parties;

(C) If the permanency goal is an Other Planned Permanent Living Arrangement, the court must ask the child or youth about his or her desired permanency goal.

(2) If the court does not consult with the child or youth directly or by a written statement, the guardian ad litem must:

(A) explain why the child or youth is unable to be consulted in a developmentally appropriate manner; or

(B) report to the court whether he or she consulted with the child or youth concerning the permanency goal; and

(C) explain why the child or youth is not consulting directly with the court; and

(D) unless directed otherwise by the child or youth, state the child's or youth's wishes regarding the permanency goal.

(3) Nothing in this rule limits the court's ability to speak with a child or youth separately pursuant to section 19-1-106(5), C.R.S. If the court speaks separately with the child or youth the court must:

(A) make a verbatim record of the consultation which may be made available to the parties by court order.

(B) identify the statements it relies on and the weight the court gave the statements, if the court relies upon statements made by the child or youth while speaking separately in adopting a permanency goal for the child or youth.

(e) Other Planned Permanent Living Arrangement. Before entering a permanency goal of Other Planned Permanent Living Arrangement for youths 16 years of age or older who

have co-occurring complex conditions that preclude any other permanency goal, the petitioner must document the compelling reasons why another permanency goal is not in the youths' best interests and the efforts made to find biological family members for the youths. The court must also ask the youth about his or her desired permanency outcome.

(f) Permanent Home Determination. For a child or youth in a case designated pursuant to 19-1-123 C.R.S.,

(1) the court must determine whether the child or youth is in a permanent home;

(2) if the child or youth is not in a permanent home, the court must find reasonable efforts were made to find the child or youth an appropriate permanent home and such a home is not currently available or that a child's or youth's needs or situation prohibit the child or youth from a successful placement in a permanent home;

(3) at the permanency hearing that occurs immediately prior to 12 months after the original placement outside the home, the court must identify whether the child or youth is in a placement that can provide legal permanency.

COMMENTS

[1] Under paragraph (a), in cases where there is a deferred adjudication or an informal adjustment and where the child or youth is placed out of the home, scheduling the initial permanency hearing is not triggered by the dispositional hearing. In such cases, the court should address permanency in the shortest time possible.

[2] In assessing whether it is developmentally appropriate to provide notice or to consult with a child or youth under paragraphs (b) and (d), *see* Whitney Barnes, E., Khoury, A., Kelly, K. (2012). "Seen, Heard, and Engaged: Children in Dependency Court Hearings." *Technical Assistance Bulletin*. National Council of Juvenile and Family Court Judges, Reno, Nevada available at http://www.ncjfcj.org/sites/default/files/CIC_FINAL.pdf.

[3] Court records, including a record made under subsection (d), are not accessible to the public in dependency and neglect proceedings. *See* Chief Justice Directive 05-01 § 4.60(b)(2).

FORM (on the following page)

District Court, _____County, Colorado Court Address: _____ THE PEOPLE OF THE STATE OF COLORADO In the Interest of _____, Child, and Concerning, _____and, _____ Respondents.	▲ COURT USE ONLY ▲ Case Number: Division
NOTICE OF PERMANENCY HEARING	

Notice is given, pursuant to section 19-3-702(2), C.R.S., that the court has set a permanency hearing in the above-captioned case on **[date], at [time] in [place]**.

I. At the permanency hearing, the court will adopt a permanency plan for the child and a target date for achieving the plan and may take up any other matter contemplated by section 19-3-702, C.R.S.

II. At the permanency hearing, the child's parents or guardians have the following rights:
   1. The right to be present at the permanency hearing.
   2. The right to notice of the petitioner's proposed permanency plan at least three working days before the hearing.
   3. The right to be represented by counsel at the hearing. Respondents found to be indigent may request that a lawyer be appointed to represent them at no expense. Parents or guardians who are under 18 years old, have the right to have a guardian ad litem appointed for them to represent their best interests.
   4. The right to have the hearing in front of a district court judge instead of a district court magistrate. The right to a hearing in front of a judge will be waived unless (1) there is a request that the permanency hearing be held before a judge made at the time the hearing is set, if the child's parent or guardian or his or her lawyer is present at the time the permanency hearing is set; or (2) there is a request that the permanency hearing be held before a judge within seven days after receiving notice that the matter has been set for hearing before a magistrate and the hearing

was set outside of the presence of the child's parent or guardian or his or her lawyer.

III. At the permanency hearing, the child has the right to be present at the hearing, the right to have a guardian ad litem appointed to represent the best interests of the child, and the right to consult with the court about the child's permanency plan in an developmentally appropriate manner. If the permanency plan is an Other Planned Permanent Living Arrangement, the court must ask the child about his or her desired permanency outcome. The child may also ask any to person attend the permanency hearing that he or she wishes to be present.

If there are questions about these rights, those questions can answered by counsel, or may be raised at the permanency hearing.

CERTIFICATE OF SERVICE

I certify that on _____ (date) a true and accurate copy of the **NOTICE OF PERMANENCY HEARING** was filed with the court and served on the Petitioner, Respondent(s), Guardian ad Litem(s), Persons with whom the child is placed, and _____ (other) in the following manner:
☐Hand Delivery, ☐E-Filed, ☐Email, ☐Faxed to this number _____, ☐Other manner _____ (describe) or ☐by placing it in the United States mail, postage pre-paid, and addressed to the following:

_____
_____
_____

_____
Signature

TO: JUVENILE RULES COMMITTEE
FROM: DRAFTING SUBCOMMITTEE
RE: POST-TERMINATION REVIEW HEARING RULE
DATE: JUNE 7, 2024

The Drafting Subcommittee recommends removing this rule as drafted because it reads like a best practice rather than a rule and there are no sources of authority for some of the more granular elements, like the specific things that should be in the GAL's report.

The Drafting Subcommittee recommends replacing the rule with a cross-reference to statute (similar to the permanency rule). The subcommittee also recommends adding language to clarify that the Counsel for Youth's position statement (required by section 19-3-606, C.R.S.) should be treated like the GAL's and petitioner's report and should be due 7 days before the review hearing. This is consistent with the Evidence rule, which provides "any party who intends to offer evidence in the form of written reports and other material relating to the child's mental, physical, and social history at a proceeding must file and serve the written reports and other material to the other parties at least 7 days in advance of the hearing unless a greater or lesser time is ordered by the court."

NEW RULE PROPOSAL:

Review Hearing Following Termination of the Parent-Child Legal Relationship

The court must hold a review hearing as set forth in section 19-3-606, C.R.S., no later than 90 days following the hearing at which the court terminated parental rights. All reports and Counsel for Youth's position statement, required by section 19-3-606(1), must be filed at least 7 days before the hearing unless a greater or lesser time is ordered by the court.

OLD RULE PROPOSAL:

Review Hearing Following Termination of the Parent-Child Legal Relationship

(a) Following termination of parental rights, the court must review the child's or youth's progress toward achieving a timely permanent placement. Section 19-3-606, C.R.S., requires the juvenile court to hold a review hearing no later than 90 days following the hearing at which the court terminated parental rights. The court may combine this hearing with a permanency planning hearing as required by section 19-3-702, C.R.S. If the court combines these hearings, the court must make findings required by Rule ____ [the rule that addresses permanency planning hearings], in addition to those identified below.

(b) At the hearing, the court's review of the disposition of the child include the following:

(1) the appropriateness of the permanency planning goal;

(2) the appropriateness of the child's current placement; and

(3) the efforts to arrange for an immediate adoption or alternative long-term placement of the child.

(c) The agency or individual vested with custody of the child must report to the court what disposition of the child, if any, has occurred. The guardian ad litem must submit a written report with recommendations to the court, based on an independent investigation addressing the best disposition of the child. Written reports of the department of human services and guardian ad litem must be submitted no later than 7 days prior to the hearing and must include, at a minimum, the following:

(1) the child's placement history, including the number of prior placements;

(2) the child's adjustment to the current placement and whether the current placement furthers the child's permanency goal;

(3) a description with recommendations of the child's immediate and long-term needs including safety, health, dental, behavioral health, and educational needs and plans;

(4) whether the services and resources provided to the child and to the child's current and/or potential placement constitute reasonable efforts to finalize the permanency planning goal;

(5) a description of the child's relationship with siblings related to the court's findings in subsection (f)(5);

(6) a description of whether reasonable efforts have been made to establish a permanent placement for the child including:

(A) if the permanency planning goal is adoption, the efforts to finalize adoption of the child, identification of prospective adoptive parents, date of placement of the child in an pre-adoptive home, status of adoption subsidy agreement and negotiations regarding post-adoption services, and status of the adoption proceeding; or

(B) if the permanency planning goal is not adoption, an explanation of why adoption is not an appropriate permanency planning goal and the efforts to finalize legal guardianship. If the permanency planning goal is not adoption or legal guardianship, a compelling reason why the child is placed in another planned permanent living arrangement. For youth over 14 years of age, the description must also include a statement of the services and resources necessary to assist the child to make the transition from foster care.

(d) In addition to the requirements in subsection (c), the guardian ad litem must include in his or her report the following:

(1) the date, manner, and location of the last contact between the child and the guardian ad litem;

(2) whether the guardian ad litem has identified any impediments or barriers to the previously adopted permanency planning goal for the child; and

(3) if the guardian ad litem consulted with the child following the termination hearing; the child's position with respect to permanency; and, whether the child will participate in person, understanding that there is a presumption the child will appear in person, unless compelling reasons are demonstrated as to why the child is not present.

(e) Any reports provided at the post-termination review hearing will be subject to the confidentiality and release requirements contained in section 19-1-309, C.R.S.

(f) At the conclusion of the hearing, the court must determine and must include in its orders:

(1) a description of whether reasonable efforts have been made to establish a permanent placement for the child including the efforts to finalize an adoption. If an adoption is not immediately feasible or appropriate, the court may order that provision be made immediately for alternative long-term placement of the child;

(2) if an adoption is not immediately feasible or appropriate, and the post-termination hearing has not been combined with a permanency hearing pursuant to 19-3-702, the court must schedule a permanency hearing within 42 days. If this is a combined post-termination and permanency hearing, the court must make findings required by Rule _____, [the rule that addresses permanency planning hearings];

(3) whether the services and current placement meet the child's immediate and long-term needs, specifically addressing the child's safety, health, dental, behavioral health, and educational needs and plans;

(4) whether the services and resources provided to the child and to the child's current and/or potential placement constitute reasonable efforts to finalize the permanency plan; and

(5) sibling placement and visitation:

(A) whether siblings are in a joint placement and whether joint placement would be contrary to the safety or well-being of any of the siblings;

(B) if the children are not in a joint placement, whether reasonable efforts have been made to facilitate joint placement in the same placement;

(C) in the case of siblings who are not jointly placed, the court must make the following findings regarding visitation:

(I) Whether visits occur with sufficient frequency and duration to promote continuity in the siblings' relationship;

(II) If visits of sufficient frequency and duration to promote continuity of the sibling relationship are not occurring, whether it has been established by a preponderance of the evidence that sibling visits would be contrary to the safety or well-being and not in the best interests of any of the siblings.

The court must set a further review or permanency hearing at least every 6 months until legal permanency is achieved.