

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of August 7, 2020 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 A.M. via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby, Chair		X
David P. Ayraud	X	
Magistrate Howard Bartlett		X
Jennifer Conn		X
Sheri Danz		X
Traci Engdol-Fruhworth	X	
Judge David Furman	X	
Ruchi Kapoor	X	
Shana Kloek	X	
Wendy Lewis		X
Peg Long	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	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Special Guests: Jenny Bender from Colorado CASA

Attachments & Handouts:

- (1) **Draft Minutes of 6/26/20 Meeting**
- (2) **Proposed Rule Re CASA**
- (3) **Two memos from the Access to Justice Committee with a proposed new advisement rule**
- (4) **Proposed Rules Re ICWA**

I. Call to Order

II. Chair's Report

A. The 6/26/2020 meeting minutes were approved by the committee.

III. Old Business

A. CASA in Rules?

Judge Welling recapped the CASA group's discussion. The group zeroed in on three areas that would be useful to place in the rule: early appointment; access to information; and reference to local MOUs, which control CASAs' role within the jurisdiction. The group looked at CASA rules from several other states. Some were highly detailed, some very general. The group felt a more general approach would be best because CASA programs are individualized within each judicial district.

The group also felt that the rule should be placed early within the rules to emphasize CASA consideration early in the case. The committee agreed that the CASA rule should be placed in the general provisions section just after counsel of record.

Ruchi Kapoor pointed out that the language of the access to information provision is not the same language used in the access to information statute, section 19-1-210. The CASA group pulled the language from a different statute, section 19-1-206(2). David Ayraud related that the language may also bump up against language in section 19-1-307 regarding information in dependency and neglect cases. Given the several statutes in play, the committee felt it best to delete the access to information provision in (b) and include a reference only to "access to information" in (c), which already references the CASA statutes and local MOUs.

The committee deleted the reference in (a) to "written" order and instead just left it as "order" to align with the statute, section 19-1-206, which does not specify written orders. Instead, the usefulness of a written order for a CASA will be noted in a comment.

The committee will table voting on the CASA rule until the next meeting, so that members can reach out to stakeholders and have time to think about it.

B. Adjudicatory Jury Trials (referred to CIP)

Judge Slade has not received any information from CIP. The issue has been referred to the CIP committee, but the committee has not yet met to discuss it.

C. C.R.J.P. 3.7 & SB19-108 (referred to Juvenile Justice Committee)

Clancy Johnson and J.J. Wallace put together four rule proposals consistent with the committee's notes at the last meeting to send to the Juvenile Justice Committee for feedback. No feedback has been provided. J.J. Wallace will follow up with the Juvenile Justice Committee.

IV. New Business

A. Rule Proposal from the Access to Justice Committee Re Interlocutory Appeal Advisement-Judge Welling

Judge Welling and Justice Gabriel provided background on this issue. The Access to Justice Committee has referred a rule proposal to this committee regarding advisement of the right to appeal under section 19-1-109(2)(c) in light of the recently announced *A.R. v. D.R.* 2020 CO 10, ¶ 43. The committee thought that an advisement of the right to appeal at that stage, as a general matter, was a good idea. The committee recommending forming a subgroup to explore the idea further. Ruchi Kapoor, Judge Meinster, Terri Morrison, and David Ayraud volunteered to be part of the group. J.J. Wallace will provide support. If anyone else would like to volunteer email Judge Welling or J.J. Justice Gabriel offered to let Justice Hart (liaison justice to the Access to Justice Committee) know the steps the committee has taken in response to their proposal.

B. Proposed ICWA Rules

Judge Furman began by thanking all the subcommittee members and interns who worked on the draft. He stated that the subcommittee's goal was to strike a balance. Rules should point to the important federal and state ICWA laws but not restate all of them. The committee felt that the proposal struck the right balance: highlighting essential ICWA requirements for all cases and pointing the direction to where to go for more detailed requirements needed in an exceptional case.

In discussing the "Application" proposed rule, Judge Furman noted that the subcommittee drafted the rules thinking about D&N cases, but the subcommittee discussed how these requirements apply in other kinds of cases involving children: APR, adoption & relinquishment, etc. The subcommittee left for the committee to decide whether to place these rules in the dependency and neglect section of the juvenile rules or to place them in the general provisions of the juvenile rules so that they are applicable in all kinds of cases. The committee felt they should be in a general provisions section (or even a special ICWA section up front with general provisions) that notes its applicability to all case types. Judge Furman said that the subcommittee will reexamine the application section in light of this decision.

In going through the rules, Judge Furman highlighted some of the subcommittee's thoughts. He noted that, since inquiry applies in all cases, there is more specificity in the inquiry rule, and it's a little longer. Notice is next, and the purpose of the rule is to verify information provided in inquiry. The intervention rule purposely avoids any indication as to whether a tribe must be represented by an attorney. The subcommittee acknowledged that many tribes cannot afford to hire counsel but felt that the issue is one for attorney regulation not one for these rules. The transfer rule parrots what the subcommittee felt were the most important (though not all) parts of the regulations and statutes. It does not go into "good cause" or the right to counsel; instead, the

rule provides citations to where that information can be found. Similarly, the qualified expert witness (“QEW”) rule doesn’t include seeking assistance from the tribe or that the regular social worker cannot serve as the QEW. But again, citations are provided.

Peg Long had a suggestion for the active efforts rule. The definition in 25 C.F.R. § 23.2 is a whole paragraph, but she suggested referencing the first sentence in the comment to give a sense of what active efforts look like (i.e., more than reasonable efforts) and then have the citation to the full definition. The committee was in favor of adding the sentence to the comment.

In the placement preference rule, the committee wanted more information from the subcommittee on (c) (“In the case of a voluntary foster care placement requiring court approval, the court shall give weight to a parent’s request for anonymity in applying the preferences.”) The committee had difficulty envisioning a situation where this would apply and would like an example. Ruchi Kapoor also probed whether “parent” was ambiguous: does this mean natural parent or foster parent?

Judge Furman said he would take the proposal back to the subcommittee for fine tuning with the committee’s comments in mind. He asked for any other comments. One committee member thought it would be a good idea for committee members to think about the proposal and how these rules will work for the next couple of months—more comments may be forthcoming after sitting with the draft for a while.

The committee will take up the proposal at the next meeting and may vote on it at that time.

C. Magistrate Spangler Announces Retirement

Magistrate Spangler announced that he is retiring, and this will be his last committee meeting. Judge Welling thanked him for his service to the committee. Justice Gabriel also thanked Magistrate Spangler, on behalf of the supreme court, for his years of service not only to the committee, but to the branch as a whole.

D. Editorial Board Handover

Judge Welling asked for a volunteer to lead up the editorial board efforts to edit the rules draft. Judge Furman volunteered and will now lead the effort. J.J. Wallace will email Judge Furman the names of people who have volunteered or been nominated to serve.

V. **Adjourn-Next Meeting October 2, 2020, 9:00 A.M.**

The Committee adjourned at approximately 11 A.M.

Respectfully Submitted,
J.J. Wallace