

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of November 2, 2018 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 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	
Melissa Thompson for Ruchi Kapoor	X	
Andi Truett for Shana Kloek	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	

Special Guests:

For Dispositional review subcommittee: Katherine Gregg and Andrew Poland.

For Pre-Adjudication subcommittee: Allison Bettenberg and Blair McCarthy.

Attachments & Handouts:

- (1) 7/27/18 Draft Meeting Minutes
- (2) Memo Re: Harmless Error & Plain Error
- (3) PreAdjudication Redlined & Clean
- (4) Present C.R.J.P.

II. Chair's Report

- A. The July 27, 2018 minutes were approved with two corrections to the attendance.

III. Old Business

- A. Harmless Error & Plain Error

J.J. Wallace briefly recapped the memo distributed with the meeting materials providing a background on the issue. The committee held a thorough discussion on the pros and cons of adopting a rule setting out a standard of review in the juvenile rules. Some committee members felt a rule adopting plain error would send a message to trial courts to be concerned about the fairness of the proceedings, even if no objection was made. Some committee members also felt a plain error rule might help protect the appellate rights of pro se litigants. Other committee members were concerned that including a plain error rule that allowed parties to routinely raise unpreserved issues would lengthen the appeals process and, correspondingly, lengthen permanency for children. The committee also discussed the challenges of adopting a new rule when the present juvenile rules reference the civil and criminal rules. On this issue, some committee members felt it would be difficult to craft a new rule: there's not clarity in case law or consensus among the committee members about what a new rule would say.

On balance, the committee agreed to table the issue. The committee decided that the issue has not been well-developed in case law; it may come up more in the future, which would develop the issue; and there's a lack of clarity on what the rule would say. The committee agreed that the issue may be revisited in the future.

IV. New Business

- A. Dispositional Review-Judge Simonet, Jennifer Conn, Wendy Lewis, & special guests Katherine Gregg & Andrew Poland.

Judge Ashby asked for clarification on the structure of the proposal. Judge Simonet clarified that the underlined headings are intended to designate separate rules.

The committee suggested that the proposed rules conform to more rule-like language. For example, under "Purpose of the Dispositional Hearing," the committee recommends beginning with "The court shall hold a dispositional hearing and shall consider: [the purposes articulated in a-c]." J.J. Wallace kept notes of the suggested

changes by the committee and will meet with the subcommittee before the subcommittee's next presentation to the committee to assist with this suggestion.

The committee discussed the reference to a continuance in the "Timing of a Dispositional Hearing" section. The committee members recognized that there are several different standards for continuances, which sometimes leads to confusion. For EPP cases, there is a statutory requirement that the court find good cause for the continuance and that the continuance serve the child's best interests. §§ 19-3-104, 19-3-505(7)(b), 19-3-508(1). For older children under the statutes, the court must find good cause exists, § 19-3-505(7)(b), and must also find that delay serves the child's best interests. § 19-3-508(1). CJD 96-08(4) adds a "manifest injustice" standard to a continuance.

In discussing CJD 96-08, the committee also noted that the requirement to file the caseworker's report 5 days before the hearing comes from the CJD and is included in the proposed rule under "Court Report." The committee believes that, along with the proposed set of rules, the committee should make recommendations regarding CJD 96-08 when the proposed rules are submitted to the court to assure consistency between them. The committee also stated that the 5-day time period should probably conform to the "rule of 7" and be changed to 7 days.

The committee talked about problems with the timing of dispositional hearings and the difficulties that lead to continuing the hearing. The committee agreed that the hearing is often continued because the caseworker's report is late, the caseworker has not met with the family (respondents & child) before the hearing, or the respondent/GAL has not been able to review the caseworker's report before the hearing. Sometimes the parent is not engaged or is incarcerated, making reviewing the report within the short time period before the hearing difficult. The committee members related strategies they used to address these problems and minimize delays. These include: briefly passing the case so that RPC and/or the caseworker can speak with the respondents about the caseworker's report in an attempt to resolve any issues that day; adopting the treatment plan as proposed, but allowing a time period for written objections to the plan; or setting a new dispositional hearing in 30 days (with or without adopting the proposed treatment plan in the interim).

The committee agreed that, since there are several different approaches, the rule should be fashioned to give the court discretion to utilize all these approaches (and the subcommittee should think about drafting a comment to list these options), but it was emphasized that in affording discretion to address the various circumstances that can result in delays, the committee does not want to normalize delay-it should still be the exception.

The committee also discussed the need for the dispositional rules to address amendments/updates to the treatment plan. One committee member explained that service providers aren't usually identified in the initial treatment plan, but it's useful to have that information formalized in writing in the treatment plan at some point.

Others commented that stipulations and/or amendments to the treatment plan are sometimes done on the record at a review hearing and are never written down. The committee sees a need for the rules to require a written memorialization of any changes to the treatment plan. Also, the committee asked the subcommittee to consider adopting a timeline for submitting proposed amendments to the treatment plan before the hearing (although some committee members noted that many jurisdictions' practice is to do oral motions and this would be a substantial change).

The committee discussed whether to include "best practice" requirements for the treatment plan (i.e., a-d under "Court Report") in the rule or in a comment. *See also* §§ 19-1-103(10) (defining "appropriate treatment plan"), 19-1-107(2.5) (requiring listing of services, priority of services, and describing services in EPP cases). The committee decided that the rules should avoid pure best practices and focus on procedures. As a general FYI, Sheri Danz mentioned that the NCJFCJ has provided Enhanced Resource Guidelines that provide useful best practices. J.J. Wallace will email the committee a [link](#) to the guidelines.

At the close of the meeting, the committee offered the following general guidance for the subcommittee to use in developing a new draft to present to the committee (sometime in early 2019):

- Think about the structure of the proposal keeping in mind consistency with other rules;
- Think about the procedures followed in dispositional review and focus on grouping the procedures into rules with related subsections by topics e.g., Hearing (Purpose, Notice, Timing, Advisement, Findings).

B. PreAdjudication-Judge Slade & Traci Engdol-Fruhworth and special guests Allison Bettenberg & Blair McCarthy

Tabled to the December 7, 2018 meeting.

C. Review Present C.R.J.P 4 through 4.5

Tabled to the December 7, 2018 meeting.

D. Next Meeting

The committee chair is unavailable for the meeting scheduled for December 14, 2018, and she asked if committee members would be available to meet on December 7th instead. Most committee members were available the afternoon of December 7th, so the meeting was changed to December 7, 2018 from 1 PM to 4 PM. The meeting will still be held in the supreme court conference room.

The chair also told the members that the 2019 meeting schedule will be set soon and committee members will be notified of the schedule by email.

V. Adjourn

The Committee adjourned at 11:48 PM.

*Respectfully Submitted,
J.J. Wallace*