Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of April 6, 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-Fruhwirth	X	
Judge David Furman	X	
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	

Attachments & Handouts

(1) Minutes from 2/2/18 Meeting
(2) Proposed Permanency Planning Rule
    a. Proposed Notice

(3) Letter from RPC Re: Ineffective Assistance of Counsel Claims

II. Chair's Report

A. The minutes were approved unanimously after amending them to reflect Pam Wakefield's attendance at the last meeting.

III. Old Business

A. Permanency Planning Proposal

(1) Judge Meinster, co-chair of the permanency subcommittee thanked the subcommittee, co-chair Colene Robinson, Laura Locke, Jennifer Mullenbach, and J.J. Wallace.

(2) Paragraph (a):

Judge Meinster explained that the subcommittee began by debating whether the permanency hearing statute envisions a right to an evidentiary hearing. In practice it seems like permanency "hearings" are non-adversarial and perfunctory. But, there are occasions where the permanency plan is challenged through argument or a permanency hearing is contested and called something else (for example, a return home hearing). The subcommittee settled on permanency hearings being a right with the understanding that a contested hearing may not be held on every occasion. Judge Ashby asked committee members about their experiences. Committee members seemed to agree that, if contested, permanency hearings usually involve only argument, or they are combined with another kind of hearing if there is evidence (for example, a combined termination/permanency hearing). One committee member liked treating the hearing as a right because it would enforce federal regulations, which require a record on placement preferences. The committee also suggested using "placed out of the home" instead of "out-of-home placement" to conform to the statute.

The second big issue for the subcommittee was whether to address time frames. The subcommittee had difficulty summarizing generally-applicable time frames and concluded that permanency scheduling is case-by-case, so the subcommittee decided not to reference timeframes in the rule. The subcommittee also thought that addressing permanency was a priority in most jurisdictions and did not think that adhering to time frames was a problem. The draft uses the dispositional hearing as a prompt to schedule the permanency hearing. The committee noted that when there is a deferred adjudication or informal adjustment, there is no dispositional hearing and might be worth including in a comment. The committee thought inserting "timely" in the first sentence would be a good prompt for parties to figure out the permanency schedule in unique situations.

The committee also agreed to use "any party" instead of "any interested party" to conform with usage in other rules.

The committee also suggested that a case may have several permanency hearings, so suggested use of the plural.

After revision by the committee, paragraph (a) reads:

> **Hearing.** The Court must hold timely permanency hearings for any child who is placed out of the home. Scheduling of the initial permanency hearing should occur at the dispositional hearing. The hearing may be scheduled by the Court or upon motion of any party.
>
> **Comment**
> In cases where there is a deferred adjudication or an informal adjustment, scheduling the initial permanency hearing is not triggered by the dispositional hearing. In such cases, the initial permanency hearing should be scheduled within three months of the deferred adjudication or the informal adjustment.

(3) Paragraph (b):

On this provision, Judge Meinster recounted that the subcommittee tried to draft the notice provision to account for § 19-3-702(2)'s language, which requires that "the court shall promptly issue a notice." But the draft rule also tries to account for the wide-spread practice that the department provides and sends the notice because the department is more likely to have the address for the child's placement. The committee agreed and believed the rule should be flexible. The committee revised the draft language to reflect that it's the court's duty to ensure that notice is being sent, but accounts for the possibility that the department may be the party sending the notice and refers to the specific subsection in the statute which controls to whom notice must be sent. Committee members also moved the language about GALs ensuring that children receive notice of the permanency to a comment and favored use of "developmentally appropriate" over "age-appropriate."

After revision by the committee, paragraph (b) reads:

> **Notice.** For any permanency hearing, including modification under paragraph (d) and review under paragraph (e), the court must ensure that notice is provided pursuant to section 19-3-702(2). Placement providers must provide notice to the child of any upcoming hearings. The permanency hearing notice must be in substantial compliance with Form __ of the Appendix of Chapter 28.
>
> **Comment**
> The guardian ad litem must ensure the child receives developmentally appropriate notice of the permanency hearing.

(4) Notice Form:

Judge Meinster said the subcommittee drafted the form notice, but wanted input from the committee in two areas: (i) what should the notice say about what happens at the permanency hearing (the subcommittee provided a long version and a short version) and (ii) what are "the constitutional and legal rights of the child and the child's parents or guardian"?

(i) On the first issue, the committee did not like the long version of section (I) of the notice. The committee felt that by parroting the statute, lay parties would have a difficult time understanding the meaning.

The committee also did not think that the short version of section (I) of the notice provided an understanding of what would take place at the permanency hearing. Committee members felt that most parents would not understand the meaning of "a permanency plan." On this issue, many committee members felt that it was largely counsel's role to explain the permanency hearing to their clients, and, as a result, the notice may not need to be too detailed about the hearing. The committee suggested adding a "catch-all" to the short version of section (I) such as: "At the permanency hearing, the court will set 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(4)] or [the whole statute]."

(ii) On the second issue, Sheri Danz volunteered that she has recently been working on updating the GRID (Guided Reference in Dependency) with the help of ORPC. She will provide the committee with the GRID's list of children's rights and respondents' rights and, at the next meeting, the committee can decide which ones belong on the notice. Sheri will also provide the GRID section on the permanency hearing for the next meeting to assist in examining the rest of the rule.

(5) Paragraph (c):

The committee did not discuss paragraph (c), but, in discussing the form notice's language about receiving the proposed permanency plan before the hearing, the committee thought that the rule itself should highlight that requirement. See § 19-3-702(2). The committee felt that paragraph (c) was the best place to make the reference.

(6) After finishing paragraph (b) (but not the form notice), the committee tabled further discussion until the next meeting and moved on to new business.

IV. New Business

A. Letter from ORPC Re: Ineffective Assistance of Counsel Claims

(1) After a brief discussion, the committee decided to further explore whether a procedural mechanism for raising ineffective assistance of counsel claims should be

included in the rules. Ruchi Kapoor has agreed to head up the exploratory effort. She's done a lot of research into what other states do and what options are out there. Ruchi's hoping to get other perspectives on the pros and cons of the different approaches. If you or someone you know could help her look at the issue from all angles, please email her to join her group: RKapoor@coloradoorpc.org.

(2) One committee member wondered how often these kinds of claims were made, and how often they were successful at securing a remand. The member was concerned that by providing a mechanism, we may be creating a problem and causing delay rather than solving a problem and minimizing delay. J.J. Wallace will research frequency of ineffective assistance of counsel claims being raised in the court of appeals and the number of cases that were remanded for further proceedings and will provide that information to Ruchi.

The Committee adjourned at 12:13 PM.

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Respectfully Submitted,
J.J. Wallace