

**Colorado Supreme Court Rules of Juvenile Procedure Committee  
Minutes of December 8, 2017 Meeting**

**I. Call to Order**

The Rules of Juvenile Procedure Committee was called to order by Judge Ashby 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:

<b>Name</b>	<b>Present</b>	<b>Excused</b>
Judge Karen Ashby, Chair	X	
David P. Ayraud		X
Magistrate Howard Bartlett		X
Cynthia Cavo		X
Jennifer Conn		X
Linda Weinerman for Sheri Danz	X	
Traci Engdol-Fruhworth	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	
<b>Non-voting Participants</b>		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

**Attachments & Handouts**

(1) Minutes from 9/22/17 Meeting

(2) Shorter Version of the Rules

a. Standard CMO

- b. Section IV of the CMO
  - c. Release Form
- (3) Longer Version of the Rules

## **II. Chair's Report**

The chair introduced the new Liaison Justice: Justice Richard Gabriel, and a new committee member: Pam Wakefield.

The chair introduced Judge Woods, presiding judge of the Denver Juvenile Court, and Katie Smith with the Denver City Attorney's Office, Human Services Section. They have each expressed interest in discovery/disclosure rules as stakeholders and were interested in observing the committee's meeting.

The September 22, 2017 minutes were approved unanimously.

## **III. Old (& New) Business**

Judge Miller, co-chair of the discovery subcommittee, introduced the attending subcommittee members: Cara Nord, Heather Beattie, Amy Markwell, Jordan Lewis, Sharon Plettner, Joe Pickard, Michael Valentine, and Rebecca Tyree.

Judge Miller made an opening presentation explaining the evolution of the subcommittee's thinking. The subcommittee believes that discovery/disclosure is currently been done, but in an ad hoc manner. The subcommittee reached consensus that:

- 1) We need state-wide discovery rules
- 2) We need to be sensitive to privilege/confidentiality
- 3) We need mandatory disclosures
- 4) We need active case management by the bench
- 5) We need to be aware of the various rights and interests

Judge Miller also explained the thinking behind the new shorter version of the rules: the longer version of the rules promotes an adverse visceral reaction; the shorter version is more consistent with C.R.C.P. 16.2 and with other states' rules. However, with the shorter rules, you lose specificity and there may be a tendency, when issues arise, to look for specificity in the C.R.C.P., which are adopted for civil cases generally and may not meet the needs of juvenile cases.

Co-chair John Thirkell added that community feedback and buy-in for any discovery/disclosure requirements will be essential and he invited committee members to continue to spread the word and request feedback.

The committee's consensus was that shorter rules are preferable. The committee made the following recommendations to the proposed shorter version of the rules:

Subsection (a):

- Add language indicating that it's anticipated that informal discovery and information trading should still be happening and these rules are intended to supplement those practices.
- Emphasize that D&N cases must move quickly and note that these rules are not intended to expand statutory timeframes.
- Add language similar to C.R.J.P. 1.

Subsection (b):

- Add a timeframe for adopting a CMO to promote early, active case management.
- Add that a CMO should identify whether it's an EPP or ICWA case, UCCJEA issues, paternity issues, and any other special circumstance that may impact the case.
- Note that, as the case evolves and the posture changes, the court may need to adopt additional case management orders (such as when there's an APR hearing set).
- The committee also noted that the pre-adjudication subcommittee might be interested in thinking about CMOs and the issues that relate to that timeframe in a case.

Subsection (c):

- The committee thought subsection (c) calling for a case management hearing could be deleted in favor requiring a stipulated case management order in (b) and if the parties cannot reach agreement, the court can set a hearing under (b) as part of its active case management responsibilities.

Subsection (d):

- Add that GALs are not required to produce discovery unless ordered by the court for good cause.
- After subsection (d) the committee recommended adding another subsection stating "Upon request, the court may authorize other case participants to engage in disclosures and discovery"; this idea is separately noted in several places, so making it its own lettered subsection seems more efficient.

Subsection (e):

- Add a scope requirement that the disclosure must relate to the allegations giving rise to the case or are relevant to a contested issue before the court.
- Add "visitation summaries or reports" to the list in (2)(A)(IV)
- In (2)(A)(V) add "as provided by state or federal law or . . ." after "information"
- Take out (2)(C) (special participants language) because we added it above
- Add *any information* about Native American heritage to (2)(B)(II).
- Title (3) "*Evidence for a Contested Trial or Hearing*"
- Throughout (3) identify witnesses that *may or will* be called.
- In (3)(a) add a scope requirement such as "related to their testimony or the case."

- In (3)(b) add “a statement of the expert’s qualifications” along with CV and résumé.
- The subcommittee stated that a *summary* of the expert’s testimony is required and noted that this is an intentional departure from the C.R.C.P.

Subsection (f):

- In (1) or as a comment to the rule add language which says that discovery might not be needed in every case and that the rules are not meant to encourage unnecessary discovery and that the court has the discretion to limit discovery.
- In (2) state that written motions are not required unless the court says so (the intent is to have people informally resolve the issue or to call the court to resolve the issue, not to increase motions practice and add delay by requiring a written motion and response)
- In (3) add a presumption that it’s not in the child’s best interest to be deposed unless good cause overcomes the presumption
- In (4), begin the sentence with “Throughout a case”
- In (5), (6), & (7) take out references to pattern admissions, interrogatories, and requests for production

Subsection (g):

- The committee discussed striking (g) acknowledging the heavy burden of having a continuing duty to update disclosures and discovery. The facts in D&N cases are always changing and evolving. Instead of a continuing duty, the rule could provide mechanisms to accommodate new information as the case evolves such as requiring disclosures of additional evidence before each new kind of hearing or mechanisms allowing additional requests for discovery.

Briefly, Judge Miller also mentioned that the subcommittee discussed pattern discovery. He personally believes it would be too hard to come up with pattern discovery because every case is different and has its own issues. The committee tended to agree that pattern discovery would be very difficult to formulate.

Judge Ashby thanked the committee members for their active engagement. She also thanked Judge Miller and his hard-working subcommittee members. The Committee adjourned.

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*Respectfully Submitted,*  
*J.J. Wallace*