

**Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of February 3, 2023 Meeting**

I. Call to Order

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

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby		X
David P. Ayraud	X	
Jennifer Conn		X
Traci Engdol-Fruhworth	X	
Judge David Furman	X	
Ruchi Kapoor		X
Magistrate Randall Lococo		X
Judge Priscilla J. Loew		X
Judge Ann Gail Meinster	X	
Trent Palmer		X
Josefina Raphael-Milliner	X	
Professor Colene Robinson		X
Zaven "Z" Saroyan	X	
Judge Traci Slade		X
Anna Ulrich	X	
Pam Wakefield	X	
Abby Young		X

Non-voting Participants	Present	Excused
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Meeting Materials:

- (1) Draft Minutes of 12/2/2022 meeting**
- (2) Emails on Form Order Appointing CFY & Form Order**
- (3) Updated Memo & Redlined and Clean Rule Proposals on Order to Interview or Examine the Child**
- (4) Emails on Trial by Jury Rule and Rule Proposal**

II. Chair's Report

- A. The 12/2/22 meeting minutes were approved without amendment.

III. Old Business

- A. Drafting Subcommittee (Judge Welling and Judge Furman)

The Chair reported that the subcommittee has established a good pace—meeting every other week—and continues to make slow and steady progress. The Chair thanked the subcommittee members for all they've done and their dedicated effort. He also related that this subcommittee has been closely coordinating with the 1038 subcommittee in order to avoid duplicating efforts. He reports coordination has gone well.

- B. Proposed ICWA Rules (Judge Furman)

Judge Furman stated that the subcommittee is finalizing its work and there appears to be light at the end of the tunnel.

- C. Vision Subcommittee (Judge Welling)

Work has been tabled for now in favor of focusing on the drafting committee.

- D. HB22-1038 Right to Counsel for Youth (Anna Ulrich)

Anna Ulrich reminded the committee that “1038” refers to the bill number of the law, effective as of last month, that authorizes children 12+ to now have client-directed counsel instead of a GAL. The subcommittee is reviewing the draft rules with the new role of counsel for youth in mind.

The subcommittee has almost completed the rule for counsel of record. Judge Welling asked if the subcommittee believed that the counsel of record rule needed to be approved soon (and earlier than the other rules). The chair of the subcommittee felt that approval with the other rules would be fine.

Along with the rule, the subcommittee looked at a proposed appointment order, which is being vetted by several groups. The form order was provided with the meeting materials so that this committee could review it and offer comments. It is anticipated that the form would go through SCAO as a JDF form because that process offers an efficient route for updating (rather than as a form approved by the supreme court and adopted with the rules, which is a slower process for making updates and amendments).

One GAL member reported that she had used the form order for one of her cases but added language to reflect that she was the educational surrogate for the youth.

Judge Welling asked for reports from the field on how the new role was going. One GAL reported that she has a 16-year-old client and that she advised the client of her new role, which requires keeping client confidences and direction from client, but she's uncertain the client fully understands. The GAL member also reported having a 17-year-old client, but she stayed the GAL because of the client's diminished capacity and a new lawyer was appointed to serve as CFY. Several members indicated it was too early to tell how things were going.

The Chair thanked members for their reports. He expects that any need for rules will come from the ground up and will rely on members to offer their insights to the committee.

The Chair also thanked the 1038 subcommittee members, who, like the drafting subcommittee members (many of whom are the same), are meeting every other week. Their diligent efforts are appreciated.

E. Subcommittee to redraft Rule on Order to Interview or Examine Child (Anna Ulrich)

Anna Ulrich thanked the subcommittee members for their help in coming up with a strong proposal. She recapped that the committee had asked the subcommittee to revise the draft rule based on a recommendation of the drafting subcommittee. The goal was to stick to the statute and create a uniform process for applying for a court order under section 19-3-308(3), C.R.S. (2022). The only portion of the rule not specifically set out in statute is (b), which sets out the minimum kinds of information required and that the information be sworn. Since the statute authorizes incarceration to secure compliance with the order, the subcommittee felt this should be required for such orders.

Anna mentioned that there were no county attorneys on the subcommittee and, since this rule primarily involved DHS, she felt county attorney feedback would be useful. The Chair suggested and the committee agreed that final voting on the rule would be put off until the next meeting in April so that committee members could think about the draft rule and solicit feedback from others. The agenda item was tabled until the next meeting.

IV. New Business

A. Waiver of Jury Trial (Judge Meinster/Judge Moultrie)

Judge Meinster stated that she and Judge Moultrie have discussed the rule covering jury trials in relation to problems faced by trial courts. She explained that trial courts set several trials (and other matters) because, on the trial date, there is no certainty which jury trials (if any) would be going forward. She felt there was currently a lack of clarity regarding waiver of the jury trial right.

They reviewed the current version of the draft rule (approved by the committee some time ago) and felt it provided more clarity but offered two suggestions: (1) dropping “in person” from (b)(3) to reflect the prevalence of virtual hearings and (2) consider defining “pretrial conference” to provide a little more clarity. In looking at the draft rule, another member also asked whether “a child through their guardian ad litem or counsel for youth” reflects the new state or representation for children (best interests for children < 12; client directed for children > 12).

The Chair said the suggestions will be forwarded to the drafting committee and reminded committee members that the draft rules, after being polished by the drafting subcommittee, will come back to the larger committee.

V. Adjourn

The Chair observed that the meetings lately have been short. He attributes this to all the hard work being done by subcommittees and thanked everyone for their hard work. Justice Gabriel, on behalf of the supreme court, also thanked everyone for their efforts.

The meeting adjourned just around 9:45 AM. The next meeting is April 7, 2023 at 9 AM via Webex.

Respectfully Submitted,

*J.J. Wallace
Staff Attorney, Colorado Supreme Court*