

Colorado Supreme Court Rules of Juvenile Procedure Committee

Minutes of August 4, 2023 Meeting

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:05 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-Fruhirth		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	
Cara Nord for Anna Ulrich	X	
Pam Wakefield	X	
Abby Young	X	

Non-voting Participants Present: Justice Richard L. Gabriel, Liaison; Terri Morrison; J.J. Wallace

Special Guest: Jack Trope, member of the ICWA Rules and Resources Subcommittee

Meeting Materials:

- (1) **Draft Minutes of 4/7/2023 meeting**
- (2) **Proposed ICWA Rules**
- (3) **Letter Re: Discovery**
- (4) **Memo Re: C.R.C.P. 10**
- (5) **Memo Re: Removing (d) from Admissions or Denial Rule**

II. Chair's Report

A. The 4/7/23 meeting minutes were approved without amendment.

III. New Business

A. ICWA Rules Proposal

The Chair acknowledged the hard work of the ICWA subcommittee and introduced Judge Furman, who recapped the subcommittee's work and introduced the proposal. He noted the subcommittee recommends that the rules be sent to the supreme court as a separate, freestanding rule set (and not rules within the Rules of Juvenile Procedure) because ICWA applies to areas of law outside the Children's Code.

Judge Furman reported that the subcommittee strove to synthesize the various ICWA authorities into easily readable rules. To improve readability, the subcommittee did things such as breaking down large blocks of text into their subparts and replacing "shall" with "must" (or another more appropriate word). Like with other committees, the subcommittee wrestled with extensively quoting the authorities. The subcommittee settled on proposing general rules which cover all ICWA areas using the same words as the source authority when possible but pointing to the source authority for more detailed information. A good example of this is Rule 5. The rule, covering emergency removal or placement of a child, says "the parties must follow the procedures set forth in [authorities]" and lays out the basic standard. The rule mostly points to the appropriate authorities. Thus, the rules have extensive citations. The subcommittee felt that the value of the precise citation to practitioners outweighed the effort it will take to ensure the citations remain current.

Judge Furman then went through the rules one by one taking comments from committee members.

On Rule 1, the Chair recommend removing the brackets from "[F]oster care placement" in the definition section. This change was made.

Z Saroyan suggested re-ordering the series at the end of the comment of Rule 1 to read: "These Colorado Rules of ICWA Procedures are intended to ensure compliance with ICWA, the related ICWA regulations, and corresponding state law." The change would place "with ICWA" and "the related ICWA regulations" together and put "corresponding state law" at the end instead of between ICWA and regulations. The committee agreed with this change.

Cara Nord asked whether the ICWA subcommittee accepted the recommendation from the 1038 subcommittee to add language to Rule 11 to clarify that the court's discretionary choice to provide counsel for a child under ICWA does not supplant or abrogate any right to counsel under state law. The final proposal included the following language to address that issue: "if the court is not required to appoint counsel for the child pursuant to applicable law."

No other suggestions for change were made. One member stated that she thought the rules would be a very useful resource for people in this area.

A motion was made to approve the rules as amended today and send to the supreme court with a recommendation that they be adopted as freestanding rules. The motion was seconded, and the question called.

The committee voted unanimously (10-0) by roll call vote in favor of the motion, and it passed.

Judge Welling again thanked the subcommittee for the effort and indicated that he would write a transmittal letter to the court with the recommendation.

IV. Old Business

A. Drafting Subcommittee (Judge Welling and Judge Furman)

1) Update

Judge Welling reported that the drafting subcommittee continues its progress. He stated that the subcommittee drew inspiration from the ICWA subcommittee after seeing their finished product.

2) Letter Re Discovery

The Chair pointed out the letter he received from ORPC about pervasive issues around discovery and the urgent need for resolution of those issues. He explained that, in response, the drafting subcommittee recommends expediting finalization of the discovery rule and releasing that separately from other rules. The 1038 committee recently examined the discovery rule and pointed out issues related to current version of the rule and the new role of children as parties with client-directed counsel. The drafting subcommittee will now be taking up the discovery rule with a goal of finalizing it by the October 6 full committee meeting. The Chair asked if there was an objection to this plan. No objection was made.

Cara Nord indicated that there may also be some urgency to the rule (being drafted by the 1038 committee) covering children in court. The substantial change in law has resulted in a need for direction in this new area. Judge Meinster noted that the jury trial rule is fairly simple and straightforward and there is also a pressing need for this rule to be in place ASAP. Committee members generally agreed that these areas were also pressing needs.

3) Memo Re Recommendation to Civil Rules Committee RE C.R.C.P. 10

The drafting committee considered adopting a version of C.R.C.P. 10 into the juvenile rules but recommends that the juvenile rules utilize C.R.C.P. 10 instead of adopting a separate rule. C.R.C.P. 10 is one-stop-shopping for captions, and it applies uniformly, even to case types with their own sets of procedural rules (e.g., probate and water cases). However, the drafting committee recommends asking the civil rules committee to adopt two minor changes to C.R.C.P. 10: including Juvenile Court as a court type and adding “Juvenile Rules of Procedure” to section (h).

A motion was made and seconded to approve the recommendation. By voice vote, the motion passed unanimously.

Judge Welling will email Judge Jones, Chair of the Civil Rules committee, making the request to amend C.R.C.P. 10.

4) Memo Re Removing (d) (Waiver of Factual Basis) from Admission or Denial Rule

Judge Welling summarized the memo and the committee’s recommendation to remove the express approval of waiving a factual basis from (d) of the rule. The subcommittee acknowledged that some jurisdictions routinely allow a waiver of the factual basis as a matter of local practice, but there was uncertainty about how this practice comports with the requirement that the court find that the petition’s allegations were supported by a preponderance of evidence.

Z Saroyan believes that parties may enter into this kind of stipulation and sees no problem with waiver being in the rule. Another committee member agreed.

Judge Slade pointed out that by removing the waiver of factual basis language from the rule, the rule is silent on the issue. Thus, parties may

still enter into agreements to waive the factual basis without violating the rule.

Because the committee did not reach consensus and seemed to be thinking over the issue, the Chair suggested tabling this issue until the next meeting. The Chair asked members to think about it for the next couple of months and to ask for feedback from colleagues and other stakeholders.

B. HB22-1038 Review of Draft Rules Subcommittee

Cara Nord and the Chair related that the 1038 subcommittee is moving at an aggressive pace, working closely with the drafting subcommittee, and hopes to finish its work soon. The subcommittee is currently working on drafting a youth in court rule.

V. Adjourn

The meeting adjourned just around 10:01 AM. The next meeting is October 6 at 9 AM via Webex.

Respectfully Submitted,

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