

## Colorado Supreme Court Rules of Juvenile Procedure Committee

### Minutes of October 6, 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       |         |
| 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:** J.J. Wallace; Justice Richard L. Gabriel and Terri Morrison were absent.

**Special Guests:** Melanie Jordan, ORPC & Sheri Danz, OCR

#### Meeting Materials:

- (1) Draft Minutes of 8/4/2023 meeting
- (2) Emails Re 2023 Legislation Impacting Respondents and Draft Rules with Suggested Updates
- (3) Email Re Recording Ex Parte Removal Hearings
- (4) Memo Re Removing Factual Basis From Admission or Denial Rule
- (5) Youth in Court Memo & Proposed Rule

**(6) New Order to Interview or Examine Child; Investigation Proposal, Memo and Previous Proposal**

**II. Chair's Report**

A. The 8/4/23 meeting minutes were approved without amendment.

**III. New Business**

**A. Recognition of Service**

Tabled until the December meeting.

**B. ORPC Proposals to Address 2023 Legislative Changes**

Melanie Jordan, Policy Director at ORPC, explained that there have been several 2023 legislative changes that have potential impacts to rules: HB23-1024 (Placement with Family and Kin); SB23-039 (Incarcerated Parents); and HB-1027 (Family Time). Some are small tweaks (suggestions provided in the draft rules packet provided). She briefly outlined the suggested changes in the packet. She also pointed to more comprehensive changes that involve new things that are not addressed in the rules, e.g., family time.

After her presentation a committee member asked how she would like to move forward. Melanie suggested: 1) approving the proposal for the small changes and 2) form a subgroup to look at comprehensive changes.

Sheri Danz added that the 1038 subcommittee determined that a rule on hearings is important. She believed focusing on a rule on hearings could frame the discussion because the new legislation affecting ORPC and OCR both seem to impact hearings. A committee member stated that she does not oppose forming a subcommittee, but reminded the committee that the drafting subcommittee's complete focus is on discovery right now, so any involvement by the drafting subcommittee must wait.

As a way to move forward, the chair suggested forming a subcommittee (involving the same people as were on the 1038 subcommittee, provided they are available), to first review the proposal in the packet, which could then go to the drafting subcommittee. Then, as a second step, have the subcommittee look at the constellation of legislation to see if there are holes in the rules. He believed it would be useful for the subcommittee to reach consensus on whether rules are appropriate or necessary. If there is a split, the subcommittee can come back to the big committee for philosophical direction. If there is a consensus, undertake drafting of new rules. Magistrate Lococo, Z, Abby Young, and Anna Ulrich volunteered for "New Legislation" subcommittee. The chair asked Melanie to take the lead on the subcommittee, and she agreed.

**C. Requiring Ex Parte Emergency Removal Hearings to Be Recorded**

Z indicated that some jurisdictions, like Weld County, are making FTR records of ex parte hearings and believes this is a good idea. His preference would be to have a mandatory rule or, if not mandatory, make it required absent good cause.

Magistrate Lococo went through his jurisdiction's (Weld) process for emergency removals. A phone call initiates the process. A judicial officer is found. If it's during business hours, then the hearing is held via Webex (occasionally, it's in person). Then paperwork is done, and a shelter hearing is set. These hearings sometimes happen at night, in which case, there is no record. If it's a night or weekend, it's only done over the phone and the paperwork follows the morning of the next business day.

Anna Ulrich was concerned that some jurisdictions, particularly rural ones, do not have access to FTR from their computers and need clerk assistance to make records. Abigail Young indicates that, just this week, in her court (Denver Juvenile), judges have been given computer access to FTR, but she indicates that this is only because she has staffing shortages. Other judicial officer members indicate that they do not have similar access.

One member noted that sometimes a verbal order is given, but no case is filed. In this instance, there is no record of the hearing because there's no case in which to place a minute order or scheduled event showing that there was a hearing. There is no paper trail at all.

One judicial officer mentioned that, because the statute authorizes verbal orders, he felt that requiring a record or a written order doesn't comport with the statute. Recognizing that he's just one voice on the committee, forming a subcommittee and drafting a rule seems unnecessary to him and analogizes to a police officer taking someone into custody. The judicial officer members indicate that there are wide differences throughout the state in procedures.

Other members were ambivalent about the need for a rule but felt that a rule should not increase delay for removing children where time is of the essence.

The chair recommended authorizing Z to look into the matter further and continue to develop it to give a consensus report to the committee to see if it should be pursued further. In the meantime, anyone can offer Z feedback.

#### **IV. Old Business**

##### **A. ICWA Rules Proposal**

The Colorado Supreme Court has put the proposed rules out for comment. Written feedback is due Nov. 30<sup>th</sup>. A public hearing is set for Dec. 12<sup>th</sup>. If you would like to speak at the public hearing, sign up by Nov. 30<sup>th</sup>.

## **B. Drafting Subcommittee**

### 1) Update

As he mentioned last time, the Chair explained that the subcommittee is currently entirely focused on discovery. He believed that the rule may be ready for the December meeting.

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

Anna provided a reintroduction to this issue. To recap, waiver of factual basis is common practice, but not expressly authorized by statute. The committee was letting the issue simmer since the discussion at the last meeting. Z would like waiver of factual basis expressly authorized by the rule. Others felt remaining silent in the rule maintains the status quo. The committee reviewed the draft rule and considered the recommendation to remove (d).

A member moved to vote to adopt the recommendation. It was seconded. The question was called. The motion passed with one dissenting vote. The recommendation to remove an express authorization to waive the factual basis was adopted.

## **C. HB22-1038 Review of Draft Rules Subcommittee**

### 1) Memo on Youth in Court

Sheri Danz drew the committee's attention to the memo on p. 80 of the packet to provide background on the issues. Namely, children now have the right to attend and fully participate in all hearings. Because this is a significant shift, the feeling was that a rule to guide implementation would be important. OCR has also put training and practice standards into place to ensure their attorneys are advocating for and advancing this right.

She directed the committee's attention to the overview, which is placed before the proposed rule. The overview reflects what the committee thought was important in thinking about children and youth in court. The overview includes two areas not covered by the proposed rule that the subcommittee identified that may need updating to include children and youth in court: advisements and hearings.

### 2) Proposed Rule

Sheri summarized the proposed rule on "Children and Youth Attendance and Participation in Court" and the commentary. She also mentioned that (d) on separate hearings applies to more parties than just children. She wanted to highlight that point so that the committee may consider including that portion of the rule somewhere else. For example, in a rule on hearings.

The chair noted that there's more commentary than usual. The subcommittee included the commentary because it's there to assist embrace of this big shift.

A motion was made and seconded to approve the rule for inclusion in the draft rules packet and to send to the drafting subcommittee. Discussion of the motion included thanking Sheri for her leadership on this rule. The question was called. The motion passed unanimously.

D. Subcommittee to redraft Order to Interview or Examine the Child; Investigation.

Anna Ulrich recapped the issue. She explained that this rule fills procedural holes in section 19-3-308, C.R.S. (2023). Because the court can order jail for noncompliance with its order, the subcommittee felt that, to protect due process rights, the statement to the court to secure the order should be sworn. In reviewing the options presented, the committee came to consensus that option 1 with the “good cause” language was the better option. The committee felt that this broader language, which echoed section 19-3-308(b)(3) (stating “upon good cause shown”), was the preferable course.

A motion was made to adopt option 1 with “must” instead of should. The motion was seconded. A brief discussion was held mostly thanking the subcommittee for their thorough work. The statute was very confusing, and the subcommittee did a good job wrestling with it. The vote was called, and the motion passed unanimously.

Other announcements:

2024 Meeting Schedule: The chair recommended keeping Webex because it helps facilitate greater participation. J.J. will send out the 2024 Webex invites.

Committee membership: There has been some turnover on committee. In December, think about where we can find additional members to ensure the representation we need.

**V. Adjourn**

The meeting adjourned around 10:30 AM. The next meeting is December 1st at 9 AM via Webex. 2024 Meeting Schedule: February 2; April 5; June 7; August 2; October 4; December 6.

*Respectfully Submitted,*

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