

IN THE SUPREME COURT OF THE STATE OF UTAH

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In re: Proposed Amendments to
Rules 7, 14, 15, 19, 37, 45,
46, 47, 50, 52, 53, and 54 of the
Utah Rules of Juvenile Procedure

Case No. 20030670-SC

ORDER

Based on its concern that active members of the Utah State Bar may not have received adequate notice of proposed amendments to Rules 7, 14, 15, 19, 37, 45, 46, 47, 50, 52, 53, and 54 of the Utah Rules of Juvenile Procedure, IT IS HEREBY ORDERED that the court's order of August 29, 2003, granting final approval of these amendments is rescinded.

IT IS FURTHER ORDERED that the proposed amendments to Rules 7, 14, 15, 19, 37, 45, 46, 47, 50, 52, 53, and 54 of the Utah Rules of Juvenile Procedure shall be effective November 1, 2003, under the emergency rulemaking authority of 11-101(4)(E), Code of Judicial Administration, pending a second publication of the proposed amendments and a 45-day comment period. Following this period, and review of any comments received, the court will ratify, amend, or repeal the proposed amendments.

FOR THE COURT:

November 3, 2003
Date

Christine M. Durham
Christine M. Durham,
Chief Justice



Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Supreme Court's Advisory Committee on the Rules of Juvenile Procedure
From: Alicia Davis
Date: November 26, 2003
Re: Minutes

Rule 11-101, "Supreme Court's Rulemaking Process" provides that

(I) Recording secretaries. The Office of General Counsel may appoint a third-year law student or member of the Bar in good standing to serve as a recording secretary for each committee. The recording secretary shall be appointed to serve a one-year term. The recording secretary, under the general supervision of the staff attorney, shall attend and take minutes at committee meetings, provide research and drafting assistance to committee members and perform other assignments as requested by the chair. Recording secretaries shall be paid an honorarium for their services.

Please consider serving in this capacity.

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

DRAFT
PROPOSED APPELLATE RULES FOR CHILD WELFARE APPEALS

Rule 1. (f) Rules for appeals in child welfare proceedings. Appeals taken from juvenile court orders related to abuse, neglect, dependency, termination, and adoption proceedings are governed by Title VIII, Rules 52 through 59, except for orders related to substantiation proceedings under section 78-3a-320. Rules 9, 10 and 23B do not apply, but the other appellate rules apply if not inconsistent with Rules 52 through 59.

Rule 2. Suspension of Rules.

In the interest of expediting a decision, the Court of Appeals, on its own motion or for extraordinary cause shown, may, except as to the provisions of Rules 4(a), 4(b), 4(e), 5(a) and 48, 52, and 59, suspend the requirements or provisions of any of these rules in a particular case and may order proceedings in that case in accordance with its direction.

Title VIII. APPEALS FROM CHILD WELFARE PROCEEDINGS.

Rule 52. Child Welfare Appeals .

(a) *Time for appeal.* A notice of appeal from an order in a child welfare proceeding, as defined in rule 1(f), must be filed within 15 days of the entry of the order appealed from. If a timely post judgment motion is filed pursuant to Utah Rules of Civil Procedure 50(b), 52(b), or 59, the time for appeal shall run from the entry of the order disposing of the motion.

(b) *Time for cross-appeal.* A notice of cross appeal may be filed within the 15 days for filing a notice of appeal or within 5 days after a notice of appeal is filed, whichever period last expires.

(c) *Appeals of interlocutory orders.* Appeals from interlocutory orders are governed by Rule 5.

Rule 53. Notice of Appeal.

(a) *Filing and contents.* A notice of appeal filed pursuant to Rule 52(a) must be filed with the clerk of the juvenile court where the order was entered. The notice shall specify the party or parties taking the appeal; shall designate the judgment or order, or part thereof, appealed from; shall designate the court from which the appeal is taken; and shall designate the court to which the appeal is taken. The notice of appeal shall

substantially comply with the notice of appeal form that accompanies these rules.

(b) *Signature or Diligent Search.* The notice of appeal must be signed by appellant's counsel and by appellant, unless the appellant is a minor child or state agency.

Counsel filing a notice of appeal without appellant's signature shall contemporaneously file, with the clerk of the juvenile court, a certification that substantially complies with the Counsel's Certification of Diligent Search form that accompanies these rules. An amended notice of appeal adding appellant's signature shall be filed within 15 days of the filing of the notice of appeal or the appeal shall be dismissed.

(c) *Service.* The appellant shall serve a copy of the notice on counsel of record of each party, including the Guardian ad Litem, or, if the party is not represented by counsel, then on the party at the party's last known address, in the manner prescribed in Rule 3(e).

Promptly after filing the notice of appeal with the clerk of the juvenile court, the appellant shall mail or deliver an informational copy of such notice to the clerk of the Court of Appeals.

Rule 54. Transcript of proceedings.

(a) *Duty of appellant to request transcript.* Within four days after filing the notice of appeal, appellant shall request from the appeals clerk in the juvenile court a transcript of such parts of the proceedings as appellant deems necessary for purposes of the appeal. If appellant intends to urge on appeal that a finding or conclusion is unsupported by or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to such finding or conclusion. Neither the court nor the appellee is obligated to correct appellant's deficiencies in providing the relevant portions of the transcript. Appellant shall serve a copy of the request for transcript on all parties, and file it with the clerks of both the juvenile and appellate court.

(b) *Notice that no transcript needed.* If no parts of the proceeding need to be transcribed, within four days after filing the notice of appeal, the appellant shall file a notice to that effect with the clerk of the juvenile court and a copy with the clerk of the Court of Appeals.

Rule 55. Petition on appeal. The appellant shall file with the clerk of the Court of Appeals an original and four copies of the petition on appeal.

(a) *Filing; dismissal for failure to timely file.* The petition on appeal must be filed with the appellate clerk within 15 days from the filing of the notice of appeal or the amended notice of appeal. If the petition on appeal is not timely filed, the appeal shall be dismissed. It shall be accompanied by proof of service. The petition shall be deemed filed on the date of the postmark if first-class mail is utilized. The appellant shall serve a

copy on counsel of record of each party, including the Guardian ad Litem, or, if the party is not represented by counsel, then on the party at the party's last known address, in the manner prescribed in rule 21(c).

(b) *Preparation by trial counsel.* The petition on appeal shall be prepared by appellant's trial counsel. Trial counsel may only be relieved of this obligation by the juvenile court upon a showing of extraordinary circumstances. Claims of ineffective assistance of counsel do not constitute extraordinary circumstances but should be raised by trial counsel in the petition on appeal.

(c) *Format.*

All petitions on appeal shall substantially comply with the Petition on Appeal form that accompanies these rules. The petition shall not exceed 15 pages, excluding the attachments required by rule 55(d)(6), and shall comply with rule 27(a), (b) and (d), except that it may be printed or duplicated on one side of the sheet. In addition, the cover shall prominently include the fact that the appeal is from a juvenile court child welfare proceeding, as defined in rule 1(f).

(d) *Contents.*

The petition on appeal shall include all of the following elements:

1. A statement of the nature of the case and the relief sought.
2. The entry date of the judgment or order on appeal.
3. The date and disposition of any post-judgment motions.
4. A concise statement of the material adjudicated facts as they relate to the issues presented in the petition on appeal.
5. A statement of the legal issues presented for appeal, how they were preserved for appeal, and the applicable standard of review. The issue statements should be concise in nature, setting forth specific legal questions. General, conclusory statements such as "the juvenile court's ruling is not supported by law or the facts" are not acceptable.
6. The petition should include supporting statutes, case law, and other legal authority for each issue raised, including authority contrary to appellant's case, if known.
7. The petition on appeal shall have attached to it:
 - (i) a copy of the order, judgment, or decree on appeal;
 - (ii) a copy of any rulings on post-judgment motions.

Rule 56 Response to petition on appeal.

(a) *Filing.* Any appellee, including the Guardian ad Litem, may file a response to the petition on appeal. An original and four copies of the response must be filed with the clerk of the Court of Appeals within 15 days after service of the appellant's petition on

appeal. It shall be accompanied by proof of service. The response shall be deemed filed on the date of the postmark if first-class mail is utilized. The appellee shall serve a copy on counsel of record of each party, including the Guardian ad Litem, or, if the party is not represented by counsel, then on the party at the party's last known address, in the manner prescribed in rule 21(c).

(b) *Format.* A response shall substantially comply with the Response to Petition on Appeal form that accompanies these rules. The response shall not exceed 15 pages, excluding any attachments, and shall comply with Rule 27(a) (b) and (d), except that it may be printed or duplicated on one side of the sheet.

Rule 57 Record on Appeal; transmission of record.

The record on appeal shall include the legal file, any exhibits admitted as evidence or judicially noticed, and any transcripts.

The record shall be transmitted by the juvenile court clerk to the clerk of the Court of Appeals upon completion of the transcript or, if there is no transcript, within 20 days after the filing of the notice of appeal.

Rule 58 Ruling.

(1) After reviewing the petition on appeal, any response, and the record, the Court of Appeals may rule by opinion, memorandum decision, or decision without opinion. In addition to the permissible dispositions in rule 30, the Court of Appeals may issue a decision without opinion or may set the case for full briefing under rule 24. The Court of Appeals may order an expedited briefing schedule and specify which issues shall be briefed.

(2) If the Court of Appeals affirms, reverses, or remands the juvenile court order, judgment, or decree, further review pursuant to Rule 35 may be sought. The refusal of the Court of Appeals to grant full briefing shall not be a ground for further review.

Rule 59 Extensions of time.

(a) *Extension of time to appeal.* The juvenile court, upon a showing of good cause or excusable neglect, may extend the time for filing a notice of appeal upon motion filed prior to the expiration of time prescribed by Rule 52. No extension shall exceed 10 days past the prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(b) *Extension of time to file petition on appeal or response.* The Court of Appeals for good cause shown may extend the time for filing a petition on appeal or a response to the petition on appeal upon motion filed prior to the expiration of the time for which the extension is sought. No extension shall exceed 10 days past the original due date or 10 days from the date of entry of the order granting the motion, whichever occurs later. The motion shall comply with Rule 22(b)(4).

PROPOSED CHANGES TO THE UTAH RULES OF JUVENILE PROCEDURE

Rule 52 Appeals.

(a) An appeal may be taken from the juvenile court to the Court of Appeals from a final judgment, order, or decree, except as otherwise provided by law, by filing a notice of appeal with the clerk of the juvenile court. The notice of appeal from an order in a child welfare proceeding, as defined in Utah Rule of Appellate Procedure 1(f), must be filed within 15 days after entry of the judgment, order, or decree appealed from. In all other proceedings, the notice of appeal shall be filed within 30 days after entry of the judgment, order, or decree appealed from. In non-delinquency cases, a Notice of Appeal of a party who is not a minor must be signed by each party himself or herself.

(b) An appeal from an interlocutory order may be sought by any party by filing a petition for permission to appeal from the interlocutory order with the Court of Appeals within 20 days after the entry of the order of the juvenile court.

(c) The Utah Rules of Appellate Procedure shall govern the appeal process, including preparation of the record and transcript.

(d) No separate order of the juvenile court directing a county to pay transcript costs is required to file a Request for Transcript in an appeal by an impecunious party who was represented during the juvenile court proceedings by court-appointed counsel.

(e) A party claiming entitlement to court-appointed counsel has a continuing duty to inform the court of any material changes that affect indigent status. If at any stage in the trial or appellate proceeding the court makes a finding that a party does not qualify, or no longer qualifies for indigent status, the court may order the party to reimburse the county or municipality for the reasonable value of the services rendered, including all costs.

Rule 53. Appearance and withdrawal of counsel.

(a) Appearance. An attorney shall appear in proceedings by filing a written notice of appearance with the court or by appearing personally at a court hearing and advising the court or by appearing personally at a court hearing and advising the court that he is representing a party. Once an attorney has entered an appearance in a proceeding, the attorney shall receive copies of all notices served on the parties.

(b) Withdrawal.

(1) Retained Counsel. Consistent with the Rules of Professional Conduct, a retained attorney may withdraw as counsel of record unless withdrawal may result in a delay of trial or unless a final appealable order has been entered. In such circumstances, a retained attorney may not withdraw except upon written motion and approval of the court.

(2) Court-appointed counsel. Court-appointed counsel may not withdraw as counsel of record except upon motion and signed order of the court. If the court grants appointed counsel's motion to withdraw, the court shall promptly appoint new counsel.

(3) If a motion to withdraw is filed after entry by the court of a final appealable judgment, order, or decree, the motion may not be granted unless counsel, whether retained or court-appointed, certifies in a written statement: (a) that the represented party in a delinquency proceeding has been advised of the availability of a motion for new trial or a certificate of probable cause and that, if appropriate, the same has been filed; and (b) that the represented party has been advised of the right to appeal and that, if appropriate, a Notice of Appeal and a Request for Transcript have been filed.

(4) The juvenile court may not allow trial counsel to withdraw from an appeal in a child welfare proceeding, as defined in Utah Rule of Appellate Procedure 1(f), absent a showing of extraordinary circumstances. Claims of ineffective assistance of counsel do not constitute extraordinary circumstances but should be raised by trial counsel in the petition on appeal.

(5) When an attorney withdraws as counsel of record, written notice of the withdrawal must be served upon the client of the withdrawing attorney by first class mail, to his or her last known address, and upon all other parties not in default and a certificate of service must be filed with the court. If a trial date has been set, the notice of withdrawal served upon the client shall include a notification of the trial date.

(6) A guardian ad litem may not withdraw except upon written motion and approval of the court.

Proposed Statutory Amendments to Accompany New Appellate Rules 52-59 Applicable to Appeals in Child Welfare Proceedings

78-3a-913 Right to counsel --Appointment of counsel for indigent --Cost -- Court hearing to determine compelling reason to appoint a noncontracting attorney -- Rate of pay.(1) (a) The parents, guardian, custodian, and the minor, if competent, shall be informed that they have the right to be represented by counsel at every stage of the proceedings. They have the right to employ counsel of their own choice and if any of them requests an attorney and is found by the court to be indigent, counsel shall be appointed by the court as provided in Subsection (3). The court may appoint counsel without a request if it considers representation by counsel necessary to protect the interest of the minor or of other parties.(b) The cost of appointed counsel for an indigent minor or other indigent party, including the cost of counsel and expense of appeal, shall be paid by the county in which the hearing is held. Counties may levy and collect taxes for these purposes.(c) The court shall take into account the income and financial ability to retain counsel of the parents or guardian of a minor in determining the indigency of the minor.(2) If the state or county responsible to provide legal counsel for an indigent under Subsection (1)(b) has arranged by contract to provide services, the court if it has received notice or a copy of such contract shall appoint the contracting attorney as legal counsel to represent that indigent.(3) The court shall select and appoint the attorney or attorneys if:(a) the contract for indigent legal services is with multiple attorneys; or(b) the contract is with an additional attorney or attorneys in the event of a conflict of interest.(4) If the court considers the appointment of a noncontracting attorney to provide legal services to an indigent despite the existence of an indigent legal services contract and the court has a copy or notice of such contract, before the court may make the appointment, it shall:(a) set the matter for a hearing;(b) give proper notice to the attorney general or county attorney of the responsible county of the hearing; and(c) make findings that there is a compelling reason to appoint a noncontracting attorney before it may make such appointment.(5) The indigent's mere preference for other counsel shall not be considered a compelling reason justifying the appointment of a noncontracting attorney.(6) The court may order a minor, parent, guardian, or custodian for whom counsel is appointed and the parents or guardian of any minor for whom counsel is appointed to reimburse the county for the cost of appointed counsel.(7) ~~If the minor and other parties were not represented by counsel, the court shall inform them at the conclusion of the proceedings that they have the right to appeal.~~

78-3a-909 Appeals.(1) An appeal to the Court of Appeals may be taken from any order, decree, or judgment of the juvenile court.

(2) Appeals of right from juvenile court orders related to abuse, neglect, dependency, termination, and adoption proceedings, shall be taken within 15 days from entry of the order, decree, or judgment appealed from. In addition, the notice of appeal must be signed by appellant's counsel, if any, and by appellant, unless the appellant is a minor child or state agency. If an appellant fails to timely sign a notice of appeal, the appeal shall be dismissed.

(3) In all other appeals of right, the appeal shall be taken within 30 days from the entry of the order, decree, or judgment appealed from and the notice of appeal must be signed by appellant's counsel, if any, or by appellant. The attorney general shall represent the state in all appeals under this chapter.

(4) The court shall inform the parties in open court at the conclusion of the proceedings of the requirements of this section, including: their right to appeal within the specified time limits; the need for their signature on a notice of appeal in appeals from juvenile court orders related to abuse, neglect, dependency, termination, and adoption proceedings; and the need for parties to maintain regular contact with their counsel and to keep all other parties and the appellate court informed of their whereabouts.

(5) The court shall inform the parties' counsel at the conclusion of the proceedings that, if an appeal is filed, they must represent their clients throughout the appellate process unless relieved of that obligation by the juvenile court upon a showing of extraordinary circumstances.

(6) During the pendency of an appeal from juvenile court orders related to abuse, neglect, dependency, termination, and adoption proceedings, parties shall maintain regular contact with their counsel, if any, and keep all other parties and the appellate court informed of their whereabouts.

(4 7) Unless the juvenile court stays its order, the pendency of an appeal does not stay the order or decree appealed from in a minor's case, unless otherwise ordered by the Court of Appeals, if suitable provision for the care and custody of the minor involved is made pending the appeal.

(8) The name of the minor may not appear on the record on appeal.

78-45c-314 Appeals. An appeal may be taken from an final order in a proceeding under this chapter in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under Section 78-45c-204, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

IN THE _____ DISTRICT JUVENILE COURT,
_____ COUNTY, STATE OF UTAH

EXPEDITED MOTION FOR
SUBSTITUTION OF COUNSEL

In the Interest of:

Date of Birth:

Case No. _____

Judge _____

**1. NOTE TO PETITIONER: THIS MUST BE SUBMITTED
AT LEAST 10 DAYS PRIOR TO YOUR SCHEDULED HEARING OR
A CONTINUANCE MAY NOT BE GRANTED.**

(initial here) _____

2. Petitioner hired/was appointed _____, Attorney-at-Law on or
about _____. A trial on this matter is scheduled for _____, 200__ at __:____
am/pm. (Attach notice of hearing).

(initial here) _____

3. Petitioner requests substitution of counsel because: [Describe why you
feel you are entitled to new counsel, for example: your specific complaints about counsel, how
often you have talked to counsel, what sort of relationship you have with counsel, etc. Attach
any documents or records that relate to counsel's representation.]

(initial here) _____

3. For these reasons, Petitioner respectfully requests that the Court enter an order setting this motion for hearing before trial. PETITIONER WILL STILL APPEAR AT REGULARLY SCHEDULED HEARING. This motion will be set for hearing immediately prior to trial. (initial here)_____

NOTE: EVEN THOUGH YOU HAVE SUBMITTED THIS MOTION YOU ARE STILL REQUIRED TO APPEAR AT YOUR REGULARLY SCHEDULED HEARING.

Petitioner: _____

Add
MZILING
CERT.

INSTRUCTIONS TO THE PETITIONER

Cases alleging abuse, neglect, or dependency of a child are governed by Utah Code 78-3a-301 et seq. The procedure is set forth in the Utah Rules of Juvenile Procedure. If you have any questions not addressed in these instructions, refer to the Utah Code. You should be able to locate a copy in your local library, on the State Court Website at <http://courtlink.utcourts.gov> (for procedural rules), or the Legislature's Website at <http://www.state.le.us> (for the Utah Code).

1. FILING FOR CHANGE OF COUNSEL

The right to counsel in parental termination proceedings is granted pursuant to *Utah Code Ann. § 78-3a-913(1)(a)* (2002), which provides that parents, guardians, custodians, and the minor, if competent, shall be informed that they have the right to be represented by counsel at every stage of the proceedings. They have the right to employ counsel of their own choice and if any of them requests an attorney and is found by the court to be indigent, counsel shall be appointed by the court.

If your attorney has failed to consult with you, or provide available information as to your case, you may request that be allowed to be given time to hire or consult with new counsel. The judge is not obligated to decide that you are entitled to new counsel. Motions for substitute counsel made solely to impede the prompt administration of justice will not be granted. This claim must be made in a timely fashion, but in no ~~case~~^{way} later than 10 days prior to trial. If make this claim less than 10 days prior to trial, the judge may deny your request.

You must fill out this form completely. If you do not provide facts showing that you are entitled to new counsel, the judge may deny your request.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this proceeding should call the court clerk at least three working days prior to the proceeding.

MEMORANDUM

To: Juvenile Rules Committee
FROM: Paul Wake
SUBJECT: December 4's Final Agenda Item
DATE: 12/3/03

In the hope that a written, edited explanation of the agenda item Alicia asked me to address will be more lucid than an off-the-cuff oral summary, here is a memo.

Discussion of URJP 19. This rule confused me a bit when I read it after we made the revision putting a courtesy copy provision in subsection (f). Subsection (a) speaks of pleadings and motions in dependency cases. Subsection (b) seems to refer to and elaborate on subsection (a); in other words, it also appears to deal specifically with dependency. More subsections follow, which also seem to be part of a unified explanation of the pleadings and motions discussion begun by subsection (a). Subsection (l)—the last subsection—says that in delinquency matters motions practice is governed by the criminal rules. I am thinking that this whole rule can be read to say that subsections (a) through (j or k) are only dependency-related, and therefore subsection (f)'s courtesy copies provision does not apply to delinquency proceedings. I am wondering whether that is the correct reading, and if so, whether that needs to be clarified, perhaps in a note. I am also wondering whether, if that is a correct reading, anyone on the committee thinks that there should be a requirement for courtesy copies in delinquency matters.

Motion regarding URJP 53. This rule also confused me when I read the rule after we revised it. The rule requires that before withdrawal, counsel must certify that the client knows of the "availability of a motion for a new trial or a certificate of probable cause." I wasn't sure what the "certificate of probable cause" language meant in a juvenile court context. In doing some research, it seems that in the criminal code and rules there is a provision allowing adults convicted of crimes to avoid incarceration during an appeal if they get a "certificate of probable cause" from the trial judge saying it's safe for them to be out on the streets. I think that Rule 53 picked up the certificate of probable cause language during the CJA revision when we brought over Rule 4-604, which was also incorporated into the criminal rules (Rule 4-604 had dealt with withdrawal in criminal and delinquency cases). It appears to me that Rule 4-604's certificate of probable cause language dealt specifically with criminal cases; I couldn't find a juvenile equivalent to the criminal code § 77-20-10 and criminal rule 27's provisions dealing with certificates of probable cause in an appellate context, and one of our more experienced juvenile judges had never heard of a certificate of probable cause process in juvenile court. I am thinking that the language dealing with a motion for a new trial was properly brought over from 4-604, but that the "or a certificate of probable cause" language should be deleted. Unless someone points out something I'm missing, I will make that motion.

No Need to Discuss URJP 46. I believe my concern was about language potentially limiting the ability of parents to address the court, and I'm pretty sure we fixed that on August 1.