

AGENDA

SUPREME COURT'S ADVISORY COMMITTEE ON THE RULES OF JUVENILE PROCEDURE

WebEx Virtual Conference
May 1, 2020
Noon – 2:00 p.m.

12:00-12:10	Welcome and Approval of Minutes <i>(Draft Minutes of April 3, 2020—Tab 1)</i>	David Fureigh
12:10-1:25	Review of Rules Impacted by Legislation (Group 1)	
	Rule 5-Definitions <i>(Tab 2)</i>	Daniel Gubler
	Rule 17-The petition <i>(Tab 3)</i>	Monica Diaz
	Rule 56-Expungement <i>(Tab 4)</i>	Monica Diaz
	Rule 31-Initiation of truancy proceedings <i>(Tab 5)</i>	Janette White
	Rule 48-Post judgment motions <i>(Tab 6)</i>	Arek Butler
1:25-1:55	Rule 50-Presence at hearings Ms. Koza will review revisions to Rule 50 pertaining to tribal participation in court hearings and provide updates on discussions with the Supreme Court. <i>(Rule 50 Draft dated February 19, 2020--Tab 7)</i>	Bridget Koza
1:55-2:00	Old or New Business <ul style="list-style-type: none">• Next Meeting June 5, 2020	All
2:00	Adjourn	

TAB 1

Utah Rules of Juvenile Procedure Committee- Meeting Minutes

April 3, 2020
Noon to 2:00 p.m.
Virtual WebEx Conferencing
MEETING DATE
TIME
LOCATION

MEMBERS:	Present	Absent	Excused	MEMBERS:	Present	Absent	Excused
David Fureigh	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Michelle Jeffs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judge Elizabeth Lindsley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sophia Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judge Mary Manley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mikelle Ostler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Arek Butler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Jordan Putnam	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Diaz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Janette White	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kristin Fadel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Chris Yannelli	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Daniel Gubler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Carol Verdoia (Emeritus)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AOC STAFF:	Present	Excused		GUESTS:	Present	Absent	
Katie Gregory	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Jacqueline Carlton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Jean Pierce	<input checked="" type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	
Keegan Rank	<input checked="" type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	

AGENDA TOPIC

I. Welcome & Approval of Minutes		CHAIR: DAVID FUREIGH
The Committee reviewed and approved the minutes of February 7, 2020.		
Motion: to approve the Minutes of February 7, 2020	By: Judge Manley Second: Judge Lindsley	
Approval	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Vote: In Favor _____ Opposed _____	

AGENDA TOPIC

II. Rule 27A-Admissibility of Statements Given by Minors	DAVID FUREIGH
<p>David Fureigh reviewed the Committee's work on Rule 27A and updated the Committee on final feedback from the Supreme Court. He met with the Supreme Court on February 19, 2020 to discuss the rule, which was later finalized with the Justices by email. The February 19 draft adds a paragraph clarifying that the state retains the burden of proving that the waiver of a minor's rights was knowing and voluntary regardless of the age of the child or minor.</p> <p>Committee members reviewed the February 19 draft and noted that it would be clear and easy to explain to law enforcement. The Committee approved the draft as presented.</p>	
Action Item:	Request the Supreme Court approval Rule 27A for final publication.
Motion: to approve the draft of Rule 27A dated February 19, 2020.	By: Judge Lindsley Second: Daniel Gubler
Approval	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Vote: In Favor _____ Opposed _____

AGENDA TOPIC

III. Rule 9-Detention Hearings: scheduling; hearing procedure		DAVID FUREIGH AND MONICA DIAZ
<p>The Committee reviewed a new draft of Rule 9 created by Monica Diaz and dated March 27, 2020. Ms. Diaz explained the additions to the draft based on the passage of H.B. 384-Juvenile Justice Amendments. The amendments include replacing the reasonable basis standard with a probable cause determination to be made within 24 hours of the minor's admission to a detention facility.</p> <p>She explained that the March 27 draft updates the February 7 draft and addresses Judge Leavitt's prior public comment concerning paragraph (c). It adds a new paragraph (e) to reflect the statutory language providing that a probable cause determination and a detention hearing may occur concurrently if other timeframes for each hearing are followed.</p> <p>Judge Lindsley proposed a revision to paragraph (k) at lines 57-59 to move the phrase "another alternative program" and place it after the phrase "home detention." She proposed that subsection (k) should be amended to read "if the court determines that a less restrictive alternative to detention is appropriate it may place the minor on home detention, another alternative program, or order the minor's release upon compliance with certain conditions pending further proceedings."</p> <p>The Committee approved the draft of March 27, 2020 with the additional revision proposed by Judge Lindsley.</p>		
Action Item:	Send the approved draft of Rule 9 to the Supreme Court and request that it be sent out for public comment.	
Motion: to approve the March 27, 2020 draft of Rule 9 with the revisions to paragraph (k) proposed by Judge Lindsley.	By: Monica Diaz	Second: Sophia Moore
Approval	x Unanimous <input type="checkbox"/> Vote: # In Favor _____ # Opposed _____	

AGENDA TOPIC

IV. Rule 32-Initiation of Ungovernability and Runaway Cases		KATIE GREGORY
<p>Katie Gregory explained revisions to statute that were enacted by S.B. 65-Child Welfare Amendments. The statute now provides that proceedings to refer an ungovernable or runaway child to juvenile court must be initiated by the Division of Juvenile Justice Services rather than the Division of Child and Family Services. Ms. Gregory presented a draft of Rule 32 dated March 30, 2020, which revises Rule 32 to provide that JJS rather than DCFS file petitions for ungovernable or runaway children.</p> <p>The Committee discussed various issues pertaining to the change, including the duty of JJS to engage in earnest and persistent efforts and that JJS is developing resources and services for this population in lieu of past efforts from DCFS. Ungovernability is defined in Rule 5 and reflects who will be subject to Rule 32. The statute also clarifies that Section 78A-6-117.5 prevents the court from placing a child in the custody of DCFS without going through the provisions of 78A-6-Part 3 related to abuse, neglect and dependency proceedings.</p>		

Following discussion, the Committee approved the draft of March 30 for public comment.	
Action Item:	Review Rule 32 with the Supreme Court and seek approval to send it out for public comment.
Motion: to approve the March 30, 2020 draft of Rule 32.	By: Daniel Gubler Second: Michelle Jeffs
Approval	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Vote: # In Favor _____ # Opposed _____

AGENDA TOPIC

V. Identification of Other Legislative Bills Requiring Rule Changes	DAVID FUREIGH
<p>The Committee discussed legislation from the 2020 session and recent case law from the Supreme Court and considered related items that should be added to future agendas.</p> <p>The Supreme Court issued <i>In re G.J.P.</i>, 2020 UT 4 in February. It included language in footnotes 3 and 6 requesting that civil and juvenile rules committees consider ways to “improve our rules with respect to the appointment of guardians ad litem for adults” and further stated “we ask that they consider how the courts can better identify and appoint suitable guardians ad litem for incompetent adults.” The Committee discussed concerns regarding what should be the specific role of a guardian ad litem attorney for an incompetent parent. Several members expressed the opinion that the issue should be resolved in statute and requested that the matter of rule versus statute be addressed with the Supreme Court.</p> <p>Carol Verdoia suggested the Committee review HB 33-Abuse, Neglect and Dependency Proceedings Amendments. The bill created an opportunity and requirement for a hearing on reunification services if a state or other party files a Termination of Parental Rights petition before the dispositional hearing. Discussion should include whether specific procedures should be placed in a rule to facilitate this new legislative requirement.</p> <p>Monica Diaz provided a list of potential rules requiring revision due to the passage of additional juvenile justice legislation this year. Members accepted the following assignments for rule review:</p> <ul style="list-style-type: none"> o Judge Lindsley –Rules 21–23A, 44 o Monica Diaz – Rules 17, 56 o Dan Gubler – Rule 5 o Arek Butler – Rule 48 o Janette White – Rule 31 <p>The next meeting will be held on Friday, May 1, 2020 from Noon to 2:00 p.m.</p>	
Action Item:	Katie Gregory will provided formatted versions of the rules to members who accepted assignments.

TAB 2

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Rule 5. Definitions.

Terms in these rules have the same definitions as provided in Section 62A-7-101 and Sections 78A-6-105 and 78A-6-301 unless a different definition is given here. As used in these rules:

(a) "Abuse, neglect, and dependency" refers to proceedings under Section 78A-6-302 et seq. and 78A-6-501 et seq.

(b) "Adjudication" means a finding by the court, incorporated in a judgment or decree, that the facts alleged in the petition have been proved.

(c) "Adult" means ~~a person an individual who is 18 years of age or over old or older, except that persons 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall be referred to as "minors"~~ "Adult" does not include an individual who is 18 years old or older and whose case is under the continuing jurisdiction of the juvenile court in accordance with Section 78A-6-120.

(d) "Arrest" means the hearing at which a minor is informed of the allegations and the minor's rights, and is given an opportunity to admit or deny the allegations.

(e) "Court records" means all juvenile court legal records, all juvenile court social and probation records, and all other juvenile court records prepared, owned, received, or maintained by the court.

(f) "Disposition" means any order of the court, after adjudication, pursuant to Section 78A-6-117.

(g) "Minor" means:

(g)(1) For the purpose of juvenile delinquency: a child, or an individual who is at least 18 years old and younger than 25 years old and whose case is under the jurisdiction of the juvenile court; and

26 | (g)(2) For all other purposes in these rules: a child, or an individual who is at least 18 years
27 | old and younger than 21 years old and whose case is under the jurisdiction of the juvenile court.

28 | (gh) "Petition" means the document containing the material facts and allegations upon which
29 | the court's jurisdiction is based.

30 | (hi) "Preliminary inquiry" means an investigation and study conducted by the probation
31 | department upon the receipt of a referral to determine whether the interests of the public or of the
32 | minor require that further action be taken.

33 | (ij) "Substantiation proceedings" means juvenile court proceedings in which an individual or
34 | the Division of Child and Family Services seeks a judicial finding of a claim of substantiated,
35 | unsubstantiated or without merit with regards to a DCFS finding of severe child abuse or neglect
36 | for purposes of the Division's Licensing Information System.

37 | (jk) "Ungovernability" means the condition of a child who is beyond the control of the
38 | parent/guardian or lawful custodian, to the extent that the child's behavior or condition
39 | endangers the child's own welfare or the welfare of others or has run away from home.

TAB 3

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Rule 17. The petition.

(a) Delinquency cases.

(a)(1) The petition shall allege the offense as it is designated by statute or ordinance, and shall state: in concise terms, the definition of the offense together with a designation of the section or provision of law allegedly violated; the name, age and date of birth of the minor; the name and residence address of the minor's parents, guardian or custodian; the date and place of the offense; and the name or identity of the victim, if known.

(a)(2) The petition shall be verified and filed by the prosecuting attorney upon information and belief.

(b) Neglect, abuse, dependency, permanent termination and ungovernability cases.

(b)(1) The petition shall set forth in plain and concise language the jurisdictional basis as designated by statute, the facts supporting the court's jurisdiction, and the relief sought. The petition shall state: the name, age and residence of the minor; the name and residence of the minor's parent, guardian or custodian; and if the parent, guardian or custodian is unknown, the name and residence of the nearest known relative or the person or agency exercising physical or legal custody of the minor.

(b)(2) The petition must be verified and statements made therein may be made on information and belief.

(b)(3) A petition filed by a state human services agency shall either be prepared or approved by the office of the attorney general. When the petitioner is an employee or agent of a state agency acting in his or her official capacity, the name of the agency shall be set forth and the petitioner shall designate his or her title.

(c) Other cases.

25 (c)(1) Protective orders. Petitions may be filed on forms available from the court clerk and
26 must conform to the format and arrangement of such forms.

27 (c)(2) Adjudication Expungements. The petition shall state: the name, age and residence of
28 the ~~minor~~petitioner. ~~The petition shall state the date and nature of each adjudication which the~~
29 ~~petitioner wishes to expunge.~~ Petitions for expungement must be accompanied by an original
30 criminal history report obtained from the Bureau of Criminal Identification and proof of service
31 upon the County Attorney, or within a prosecution district, the District Attorney for each
32 jurisdiction in which an adjudication occurred prior to being filed with the Clerk of Court.
33 Petitions for expungement must meet all of the criteria of Utah Code § 78A-6-11051503.

34 (c)(3) Nonjudicial Expungement. The petition shall state: the name, age and residence of the
35 petitioner. Petition for nonjudicial expungement must be served upon the County Attorney, or
36 within a prosecution district, the District Attorney for each jurisdiction in which a nonjudicial
37 adjustment occurred. Petitions for expungement of nonjudicial adjustments must meet all of the
38 criteria of Utah Code § 78A-6-1504.

39 (c)(4) Vacatur. The petition shall state any agency known or alleged to have documents
40 related to the offense for which vacatur is sought. Petitions for vacatur must be accompanied by
41 an original criminal history report obtained from the Bureau of Criminal Identification and proof
42 of service upon the County Attorney, or within a prosecution district, the District Attorney for
43 each jurisdiction in which an adjudication occurred prior. Petitions for expungement must meet
44 all of the criteria of Utah Code § 78A-6-1114.

45 (c)~~(5)~~~~(3)~~ Petitions in other proceedings shall conform to Utah Rule of Civil Procedure 10,
46 except that in adoption proceedings, the petition must be accompanied by a certified copy of the
47 Decree of Permanent Termination.

TAB 4

Rule 56. Expungement.

(a) Any person adjudicated in a minor's case may petition the court for an order expunging and sealing the records pursuant to Section 78A-6-~~1501~~, et. seq~~1105~~.

(b) Adjudication expungement.

(b)(1) Upon filing the petition, the clerk shall calendar the matter for hearing and give at least 30 days notice to the prosecuting attorney, the Juvenile Probation Department, the agency with custody of the records, and any victim or victims representative of record on each adjudication identified by petitioner as being subject to expungement who have requested in writing notice of further proceedings. The petitioner may be required to obtain and file verifications from local law enforcement agencies in every community in which the petitioner has resided stating whether petitioner has a criminal record.

(b)(2)(e) If the court finds, upon hearing, that the conditions for expungement under Section 78A-6-~~1503~~~~1105~~ have been satisfied, the court shall order the records of the case sealed as provided in Section 78A-6-~~1503~~~~1105~~.

(c) Nonjudicial expungement.

(c)(1) A person whose juvenile record consists solely of nonjudicial adjustments, as provided for in Section 78A-6-602, may petition the court for expungement as provided for in Subsection 78A-6-1504.

(d) The clerk shall provide certified copies of the executed order of expungement, at no cost, to the petitioner and the petitioner shall deliver a copy of the order to each agency in the State of Utah identified in the order.

~~(d)(2) A person whose juvenile record consists solely of nonjudicial adjustments as provided for in Section 78A-6-602 may petition the court for expungement as provided for in Subsection 78A-6-1105(6).~~

TAB 5

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Rule 31. Initiation of truancy proceedings.

(a) The referral of a child alleged to come within the jurisdiction of the court as habitually truant shall be accompanied by a statement setting forth all actions taken and efforts made, if required, by school personnel and officials in compliance with Utah Code Ann. § ~~53A-11-103~~ **53G-6-206**. A preliminary inquiry shall be conducted by an intake officer. At the preliminary inquiry a determination shall be made as to whether the school has made efforts under Utah Code Ann. § ~~53A-11-103~~ **53G-6-206**.

(b) Except as otherwise provided by law, when a petition is filed following a preliminary inquiry, the petition shall allege what efforts have been made by the school under Utah Code Ann. § ~~53A-11-103~~ **53G-6-206**.

TAB 6

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2 **Rule 48. Post judgment motions.**

3 (a) A request for a new hearing based on the reason of newly discovered evidence shall be
4 available as set forth in U.C.A. 78A-6-1108.

5 (b) A request for a new hearing or other post-judgement relief based on any grounds other than
6 those set forth in paragraph (a) Except as provided in paragraph (c), new hearings shall be
7 available in accordance with Utah R. Civ. P. 52, 59 and 60, except as provided in paragraph (d).

8 (c)(b) If a new hearing is granted, the same burden of proof shall apply.

9 (d)(e) Motions filed under Utah R. Civ. P. 52 and/or Utah R. Civ. P. 59 must be filed no later
10 than 14 days after entry of the judgment.

TAB 7

Rule 50. Presence at hearings.

(a) In abuse, neglect, and dependency cases the court shall admit persons as provided by Utah Code Section 78A-6-114. If a motion is made to deny any person access to any part of a hearing, the parties to the hearing, including the person challenged, may address the issue by proffer, but are not entitled to an evidentiary hearing. A person denied access to a proceeding may petition the Utah Court of Appeals under Utah Rule of Appellate Procedure 19. Proceedings shall not be stayed pending appeal. As provided for by Utah Code Section 78A-6-115, a person may file a petition requesting a copy of a record of the proceedings, setting forth the reasons for the request. Upon a finding of good cause by the Court and payment of a fee, the person shall receive an audio recording of a proceeding. The Court may place under seal information received in an open proceeding.

(b) In delinquency cases the court shall admit all persons who have a direct interest in the case and may admit persons requested by the parent or legal guardian to be present.

(c) In delinquency cases in which the minor charged is 14 years of age or older, the court shall admit any person unless the hearing is closed by the court upon findings on the record for good cause if:

(c)(1) the minor has been charged with an offense which would be a felony if committed by an adult; or

(c)(2) the minor is charged with an offense that would be a class A or B misdemeanor if committed by an adult and the minor has been previously charged with an offense which would be a misdemeanor or felony if committed by an adult.

(d) If any person, after having been warned, engages in conduct which disrupts the court, the person may be excluded from the courtroom. Any exclusion of a person who has the right to attend a hearing shall be noted on the record and the reasons for the exclusion given. Counsel for the excluded person has the right to remain and participate in the hearing.

(e) Videotaping, photographing or recording court proceedings shall be as authorized by the Code of Judicial Administration.

(f) In proceedings subject to the Indian Child Welfare Act of 1978, United State Code, title 25, sections 1901 to 1963:

(f)(1) Official tribal representatives from the Indian child's tribe have the right to participate in

32 any court proceeding. The designated representative should provide his or her contact
33 information either in writing or via email to the court.

34

35 Official tribal representatives from the Indian child’s tribe have the right be present and to be
36 heard at each hearing and proceeding held with respect to an Indian child.

- 37 • New Mexico Rule Commentary – “The tribal representative also should be permitted to
38 monitor the proceedings in order to keep the tribe informed of the progress of the case, to
39 participate in the proceedings to the extent reasonably necessary to inform the court of
40 the tribe’s concerns, and to provide additional resources, including, for example,
41 services, placement options, financial support, and cultural connections.”
- 42 • California code referencing when the tribe isn’t a federally recognized tribe and court
43 permits tribal participation– “(1) Be present at the hearing. (2) Address the court.
44 (3) Request and receive notice of hearings. (4) Request to examine court documents
45 relating to the proceeding. (5) Present information to the court that is relevant to the
46 proceeding. (6) Submit written reports and recommendations to the court. (7) Perform
47 other duties and responsibilities as requested or approved by the court.”
- 48 • California & Alaska court forms re tribal designated person: (1) receive notice of
49 hearings; (2) be present at hearings; (3) address the court; (4) examine all court
50 documents relating to the case; (5) submit written reports and recommendations to the
51 court; (6) request transfer of the case to the tribe’s jurisdiction; and (7) intervene at any
52 point in a proceeding as authorized.
- 53 • BIA recommends notice of each hearing within a proceeding; change in placement;
54 change in permanency plan; transfer of jurisdiction to another state

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56 (f)(2) The Indian child’s tribe is not required to formally intervene in the proceeding unless the
57 tribe seeks affirmative relief from the court.

58 (f)(3) As provided in Utah Special Practice Rule 14-802, an Indian tribe that has formally
59 intervened may have a designated non-attorney represent the Indian tribe in the proceeding. The
60 tribe must file a written authorization for the designated non-attorney representative before the
61 non-attorney may represent the tribe. If the tribe changes its designated representative or if the

62 representative withdraws, the tribe must file a written substitution of representation or
63 withdrawal.

64 Draft 14-802(d)(13) – “In proceedings subject to the Indian Child Welfare Act of 1978, United
65 State Code, title 25, sections 1901 to 1963, an Indian tribe that has formally intervened may have
66 a designated non-attorney represent the Indian tribe in the proceeding. The tribe must file a
67 written authorization for the designated non-attorney representative before the non-attorney may
68 represent the tribe. If the tribe changes its designated representative or if the representative
69 withdraws, the tribe must file a written substitution of representation or withdrawal.