



Utah Supreme Court's Advisory Committee on the Rules of Juvenile Procedure

Approved Meeting Minutes

David W. Fureigh, Chair

Location: Webex Meeting:
<https://utcourts.webex.com/utcourts/j.php?MTID=m60614e94398c691ccac151892d1f861d>

Date: October 1, 2021

Time: 12:00 pm – 2:00 pm

<u>Attendees:</u> David Fureigh, Chair Judge Paul Dame Michelle Jeffs Judge Debra Jensen Sophia Moore Jordan Putnam Mikelle Ostler William Russell Janette White Chris Yanelli Carol Verdoia, Emeritus Member	<u>Excused Members:</u> Kristin Fadel Matthew Johnson Arek Butler
<u>Staff:</u> Bridget Koza Meg Sternitzky, Juvenile Court Law Clerk	<u>Guests:</u> Jacqueline Carlton, Office of Legislative Research and General Counsel

1. **Welcome and approval of the September 3, 2021 Meeting minutes:** (David Fureigh)

David welcomed everyone to the meeting. The Committee then proceeded with introductions for new member, William “Bill” Russell, and committee members made

professional practice disclosures as required by Rule 11-101 of the Supreme Court Rules of Professional Practice. David asked for approval of the minutes.

Judge Dame questioned the discussion on page 5 of the minutes. Judge Dame did not recall discussing the timeframes in Rule 60. Other committee members recalled this discussion, and Judge Dame withdrew his question. Sophia Moore motioned to approve the September 3, 2021 meeting minutes. Janette White seconded the motion with the amendment and it passed unanimously.

2. Action: Rule 17: The Petition

Bridget Koza reviewed with the committee language that was previously in Juvenile Rule 17(c)(2) that was removed. The first sentence in (c)(2) states “[p]etitions for adjudication expungements must meet all of the criteria of Utah Code section 80-6-1004 and petitioner,” and it should state “[p]etitions for adjudication expungements must meet all of the criteria of Utah Code section 80-6-1004 and shall state: the name, age , and residence of the petitioner.” The underlined language was previously there before the committee updated the Rule this year.

Judge Dame motioned to present the revised Rule 17 (Draft October 1, 2021) with the addition of the added language in paragraph (c)(2) to the Supreme Court for final publication. Sophia Moore seconded the motion and it passed unanimously.

3. Discussion & Action: Rule 8: Rights of minors while in detention, Rule 27A:

Admissibility of statements given by minors, and Rule 55: Transfer of minors who present a danger in detention: (David Fureigh)

David Fureigh reviewed with the Committee Rules 8, 27A, and 55 that were sent back to the Committee from the Supreme Court. The committee first reviewed Rule 8. The language from the Juvenile Code was stricken and paragraphs (a) and (c) remained. Bridget Koza proposed amending paragraph (a) to read “[i]mmediately after being admitted to a detention facility, a minor shall be advised of their rights listed in Utah Code section 80-6-205.” Bridget noted that the Juvenile Code may be amended to

include language about advising a minor of their rights in detention. The committee discussed the need to keep paragraph (a) until the statute was revised, at which point, they could revisit the rule. David likewise commented that it may be appropriate to keep the rule with the references to the statute, because law enforcement relies on the rule. Judge Dame also noted that paragraph (c) should be changed to paragraph (b), and this change was made.

The committee proceeded to discuss the advisory committee note to Rule 8. The committee discussed the purpose of the advisory committee note and whether it should be deleted. David noted that if the advisory committee note is deleted it may be difficult to reintroduce. Carol Verdoia agreed to reach out to JJS regarding reference to Utah Administrative Rule R547-13-1 in the advisory committee note, whether reference to this rule is necessary, and whether there are any future plans to change this rule before the committee decided to delete the advisory committee note.

The committee agreed to continuing discussion Rule 8 and have it be placed on the November 5, 2021 meeting agenda.

The committee then discussed Rule 27A. The language from the Juvenile Code was stricken and paragraph (a) and paragraph (d), revised to paragraph (b), remained. David raised an issue with paragraph (b), which was amended to read “[t]he state shall retain the burden of proving that the waiver of the child’s constitutional rights was knowing, voluntary, and satisfied the requirements outlined in Utah Code section 80-6-206.” David questioned whether there is any basis in case law for placing the burden on the state to prove that the waiver of the child’s constitutional rights is knowing and voluntary. Bill noted that this is based in Fifth Amendment case law. David and other committee members noted, however, that 80-6-206 does not indicate that the state bears the burden to prove the requirements in 80-6-206. Carol commented that the origin of this suggested change was based on public policy considerations. David questioned whether the rule was needed, but the committee agreed to keep the rule, since this burden is not addressed in the statute. Judge Dame also commented that “the” should

be changed to “the” before “waiver.” The committee agreed and made the recommended change.

The committee then discussed whether they should keep 8(a), which was amended to read “[t]he interrogation of a child for an offense is governed by Utah Code section 80-6-206.” Bill commented that the rule seemed redundant. Chris Yanelli commented that with the addition of “custodial” in front of “interrogation” the rule could be helpful in clarifying that Utah Code section 80-6-206 only applies to custodial interrogations. The committee agreed and made the recommended change. Sophia Moore also made the suggestions that it might be helpful to state the burden – to add “by a preponderance of the evidence” after “proving.” The committee agreed and made the recommended change.

Judge Dame also questioned why the rule changed “minor” to “child,” and it was noted that this is the language used in the statute. Sophia then commented that the title should be changed “Admissibility of statements given by a child.” The committee agreed and made the recommended change.

Judge Dame motioned to present the revised Rule 27A (Draft October 1, 2021) with changes to the Supreme Court for approval to be sent out for an initial 45-day comment period. Bill Russell seconded the motion and it passed unanimously.

The committee lastly discussed Rule 55. Bridget noted that the rule had been changed to reference the statute. Judge Dame asked whether the rule should be deleted, since it only references the statute. David noted that it would be the preference of the Supreme Court for the rule to be deleted.

Judge Dame motioned to delete Rule 55 and send it to the Supreme Court for approval to be sent out for an initial 45-day comment period. Janette White seconded the motion and it passed unanimously.

4. Action: Rule 37: Child Protective Orders: (Bridget Koza)

Bridget Koza reviewed with the committee that Rule 37 was sent out for comment and no comments were received. Bridget also reviewed that the committee started having a discussion on paragraph (d) regarding the right to counsel in private petitions. Bridget noted that past meeting minutes indicated that the Supreme Court wanted paragraph (d) to be in the rule rather than as an advisory note.

Judge Dame first suggested that it would be more accurate to reference Title 78B “Part 1 and Part 2” rather than “et seq.” in Rule 37(a). The committee agreed and the language was changed to “Utah Code Title 78B, Chapter 7, Part 1, General Provisions and Part 2, Child Protective Orders.”

The committee then continued its discussion on paragraph (d). Sophia Moore suggested getting rid of paragraph (d), because it is confusing. Judge Dame agreed and noted that there is no right to counsel in private petitions. Carol Verdoia indicated that in past discussions regarding the rule the Bench wanted to leave it within a judge’s discretion to appoint counsel in private petitions. Judge Jensen suggested polling the judges. Janette White suggested submitting the rule for comment, which would allow judges to comment on the rule. The committee agreed to submit the rule for comment.

Judge Dame motioned to approve the amendments to Rule 37 and present the revised Rule 37 (Draft October 1, 2021) with changes to the Supreme Court for approval to be sent out for additional 45-day comment period. Judge Jensen seconded the motion and it passed it unanimously.

5. Discussion & Action: Rule 45: Pre-disposition reports and social studies: (Sophia Moore & Matthew Johnson)

Sophia Moore discussed with the committee proposed amendments to Rule 45. Judge Dame asked whether “adjudication” needed to be added after “petition” in Rule 45(a)(1). Bridget clarified that probation usually starts preparing disposition reports when the petition is filed.

The committee then had a lengthy discussion on pre-adjudication reports and the ability of the court to view dispositional reports prior to adjudication. The committee noted that pre-adjudication reports should not be a practice and that judges should not be able to view disposition reports prior to adjudication. Janette White proposed changing the language from “the dispositional report shall not be submitted to or consider by the judge” to “the dispositional report should not be viewed or considered by the judge” under Rule 45(a)(3) – that way the report could be uploaded to CARE but not viewed by the judge. The committee agreed and this recommended change was made. Mikelle Ostler also commented that it may be an issue of JA training – that JAs need to be trained not to upload dispositional reports to judicial workspaces.

The committee then discussed Rule 45(b), dispositional reports in abuse, neglect, and dependency cases. David Fureigh commented that 45(b)(1) only addresses the disposition of the minor rather than the family. The committee discussed how the rule should not limit reports to a minor but should include family progress. The committee had a lengthy discussion on what could replace the term “minor.” There was a suggestion to change “minor” to “family,” but the committee agreed this would not encompass custodians or some guardians. Other members noted that the rule reads the way it does, because it is about the status of the minor, not the parents. The committee ultimately agreed to change minor, at line 26, to “case” and to leave “minor,” at line 28, for a later discussion. The committee agreed to send the rule out for comment with the recodification changes and address this issue later. Sophia made the additional recommendation to remove “dispositional” and refer to them as reports, but Bridget Koza noted that the statute refers to them as dispositional reports.

The committee also discussed why there was a reference to 80-6-307, dispositional reports in delinquency case, in the section on abuse, neglect, and dependency. The committee discussed how 80-3-408 references 80-6-307 – that reports have to be submitted in the same manner. Janette White suggested including a reference to 80-3-405, the citation to dispositional hearings, in paragraph (b)(2). Bridget noted, however,

that 80-3-405 does not refer to reports. The committee then discussed how the second sentence in paragraph (b)(2) is repetitive of the language in the statute, and the committee decided to delete the sentence beginning “[p]ursuant to Utah Code section 80-3-408. . .”

Judge Dame motioned to approve the amendments to Rule 45 and present the revised Rule 45 (Draft October 1, 2021) with changes to the Supreme Court for approval to be sent out for an initial 45-day comment period. Sophia Moore seconded the motion and it passed it unanimously.

6. Discussion: Rule 60: Judicial bypass procedure to authorize minor to consent to an abortion: (Judge Paul Dame)

Judge Dame prefaced the discussion regarding amending timeframes in paragraph (d) and statewide practice. Judge Dame noted that the amendment to Rule 60 was an attempt to fix an inadvertent result and restore the rule to its 2007-18 version.

The committee agreed that the agenda item will be placed as the first item on the November 5, 2021 meeting.

7. Discussion: Rule 25: Pleas and Rule 25A: Withdrawal of Plea: (Bridget Koza)

The committee did not have time to discuss this agenda item and agreed that the agenda item will be put on the November 5, 2021 meeting.

8. Discussion: Amending Rule 7: Warrants to allow for ex parte motion to vacate runaway E-Warrants for youth in DCFS custody who have active warrants and have either returned to placed, aged out and DCFS custody is terminated, court jurisdiction is terminated, or new E-Warrant is needed: (David Fureigh)

The committee did not have time to discuss this agenda item and agreed that the agenda item will be put on the November 5, 2021 meeting.

9. Discussion: Changes to Civil Rules 5, 7A, 7B, and 10 and Impact on Juvenile Rules:
(Bridget Koza)

The committee did not have time to discuss this agenda item and agreed that the agenda item will be put on the November 5, 2021 meeting.

The meeting adjourned at 2:10 pm. The next meeting will be held on November 5, 2021, at 12 pm via Webex.