



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

Approved Meeting Minutes

David W. Fureigh, Chair

Location: Webex Meeting

Date: May 6, 2022

Time: 12:00 p.m. – 2:00 p.m.

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

1. Welcome and approval of the April 1, 2022 Meeting Minutes: (David Fureigh)

David Fureigh welcomed everyone to the meeting and asked for approval of the April 1, 2022 Minutes. William Russell indicates on page three of the minutes, it should state “implementation” instead of “implantation.” Mr. Russell moves to approve the April 1, 2022 Minutes with that amendment. Judge Dame seconded the motion, and it passed unanimously.

2. Discussion – Staff Change and Appointing Vice Chair for the Committee:
(David Fureigh & Raymundo Gallardo)

David Fureigh indicates Raymundo Gallardo is taking Bridget’s place and is now assigned to the committee and welcomes him. Mr. Gallardo introduced himself to the committee. Mr. Gallardo indicated the juvenile court law clerks have agreed to continue to be part of the committee and provide support to research any legal issues or matters that are raised and bring information to the committee.

David Fureigh states the committee is very busy and the workload has increased. Mr. Fureigh has been informed most of the other committees have a Vice Chair and Mr. Fureigh believes the Vice Chair will retain their ability to vote. The Vice Chair will assist in Mr. Fureigh’s absence, writing letters, and learn the responsibilities of the Chair. The Vice Chair will also likely be the next Chair when Mr. Fureigh’s term is over.

Mr. Fureigh explains to the committee that the Vice Chair would be appointed by the Supreme Court and he would submit recommendations to the Supreme Court for the Vice Chair. If any of the committee members are interested, or would like to recommend someone for Vice Chair, the member should send Mr. Fureigh and Mr. Gallardo a message. Mr. Fureigh will send an e-mail to all committee members letting them know about the opportunity.

The committee discussed the time commitment that would be required of the Vice Chair, and whether a member who was close to the end of their term would be prohibited from the position. Mr. Fureigh believes the Vice Chair appointment would extend the member’s term.

3. Discussion & Action – Rule 7: Warrants; and Rule 60: Judicial Bypass Procedure to Authorize Minor Consent to an Abortion: (David Fureigh)

Mr. Fureigh indicates there were four rules that went out for comment that need to be discussed. Judge Beck submitted a comment regarding Rule 25 and Rule 25A and he expressed a desire to be here again. The committee is going to wait until he is able to join.

In regard to Rule 7: Warrants, the rule was amended to include a provision that would allow DCFS to file an ex parte motion to ask the court to vacate a warrant

they had submitted for a runaway youth in state custody prior to the warrant being executed. After Rule 7 went out for the comment period, there was a second recodification made as the legislature recodified all the DCFS statutes. The only proposed changes made were to the citations and Mr. Fureigh states he does not believe it will need to go out for public comment again. Mr. Fureigh indicates if everyone agrees to the citations, we need a motion to submit it to the Supreme Court for final publication.

Judge Dame inquires regarding the time frame that Rule 7 would go into effect to ensure it is consistent with the recodification bill that does not go into effect until September 2022. Mr. Fureigh responds and indicates the committee can ask the Supreme Court to make it effective as of September 2022. Judge Dame also indicates *ex parte* is italicized and it is not italicized in other rules and suggests it be changed. Mr. Fureigh does not believe that change would need to be sent for public comment again. Judge Dame then makes a motion to submit Rule 7 to the Supreme Court for final publication. Sophia Moore seconded the motion and it passed unanimously.

As it relates to Rule 60: Judicial Bypass Procedure to Authorize Minor Consent to an Abortion, Rule 60 was amended to change the time frame when the Court holds the Petition. The committee had representatives from the ACLU and Planned Parenthood attend a meeting a few months ago and they expressed their concern regarding the proposed amendment to the rule. The committee came up with a compromise and further amended the rule. The Supreme Court approved the proposed amendment. Mr. Fureigh represents there was one dissenting vote, but it was passed by majority and Rule 60 went out for public comment. The Supreme Court asked Mr. Fureigh to reach out to the representatives of ACLU and Planned Parenthood and invite them to make comments to the final amendments to the rule. Mr. Fureigh received a response from Valentina De Fex from the ACLU who submitted a letter stating they were not going to take a position on the current amended rule.

Mr. Fureigh indicates there needs to be a motion to submit Rule 60 to the Supreme Court to approve and publish. Matthew Johnson makes the motion and William Russell seconded the motion and it passed unanimously.

4. Discussion & Action – Rule 25: Pleas; 25A: Withdrawal of Plea: (All)

Mr. Fureigh indicates Rule 25 and Rule 25A went out for public comment at different times. Judge Beck submitted a comment on both rules and appeared at the last committee meeting to discuss his comment and opposed the repeal of Rule 25A.

Mr. Fureigh states he is not a voting member but can express his opinion on the issues. Mr. Fureigh has reviewed both comments, the rules, and the proposed amendments and indicates he believes the controversy is what is considered procedure and what is considered substantive. When Mr. Fureigh is determining what is procedure versus substantive, he will look at who the rule or statute is directed towards. If it is directed towards individuals, Mr. Fureigh labels it as substantive. If it is directed towards the Court, it is labeled as procedural. Mr. Fureigh indicates there is often a need to blend both procedure and statute to clarify and give understanding to the statute or rule. Mr. Fureigh indicates the committee needs to decide what their role is with regard to this issue and believes the committee's role should be to maintain the rules that address procedure, even though statute contains procedure and agrees with Judge Beck in this regard. Mr. Fureigh states it is important to maintain procedure in rules even though the legislature will put procedure in statute.

In regard to Rule 25 and Rule 25A, Mr. Fureigh believes what pleads an individual has a right to enter is substantive and belongs in the statute. Mr. Fureigh also believes how and when the court handles those pleas is procedural and belongs in the rule. Mr. Fureigh indicates he supports the proposed amendments in Rule 25. Mr. Fureigh also states he agrees with Judge Beck, in part, with regard to Rule 25A and does not believe section (b)(2) should be removed even though it is included in the statute by the legislature.

The committee then heard from Judge Beck. Judge Beck stated he made his comments to Rule 25 and Rule 25A to bring the issue to the attention of the committee and agrees with Mr. Fureigh's analysis. Judge Dame also agrees with Mr. Fureigh's analysis.

William Russell states he was persuaded by Judge Beck's initial comments and by the discussion in the last committee meeting. Mr. Russell indicates he feels strongly that Rule 25A should be kept largely as-is. Mr. Russell indicates Rule 25A is a blend of substantive and procedural matter because it allows an accused child to withdraw the plea. It also acknowledges rights to a minor to withdraw a plea, but then describes the process as well. Mr. Russell proposes to keep Rule 25A as a Supreme Court promulgated rule and to have the language of Rule 25A parrot the statute in Utah Code 80-6-306. Mr. Russell also proposes language be added to Rule 25 to include "as provided by these rules or by statute."

Mr. Russell makes a motion regarding Rule 25 to amend the rule to state, "A minor may tender a denial, an admission, or a plea of no contest pursuant to Utah Code Section 80-6-306 and as provided by these rules." Judge Dame expressed concern about the broad language and would like it to reference "this rule" instead of the rules broadly. Matthew Johnson agrees.

Mr. Russell motions the committee to adopt the amendment and submit it for approval and publication to the Supreme Court, unless the Supreme Court believes it needs to go back out for public comment. Sophia Moore seconded the motion and it passed unanimously.

The committee then discussed Rule 25A and Mr. Russell's proposal that instead of repealing Rule 25A altogether, Rule 25A would be changed to mirror the statute in Utah Code 80-6-306. Matthew Johnson agrees. Judge Dame stated his main concern was that the committee was not removing procedural items from the rules, even if it was included in the statute.

The committee discussed leaving Rule 25A(b)(2) and change it to mirror the language in the statute. There was some discussion whether the committee needed to make any additions to the statutory language regarding a delayed admission. Mr. Fureigh also suggested using the word "unless" instead of "until" as a change from the statutory language. Judge Dame agrees.

The committee proposed removing the language "including a plea held in abeyance" from Rule 25A(b)(2), and Rule 25A(a) and 25A(b)(1) would remain repealed. Sophia Moore proposed including a reference to Utah Code 80-6-306 in Rule 25A as well so practitioners can reference the statute. Other committee members agree.

Rule 25A would read as follows, "A request to withdraw an admission or a plea of no contest made pursuant to Utah Code Section 80-6-306, shall be made within 30 days after entering an admission or a plea of no contest, even if the court has imposed disposition. If the Court has not imposed dispositional orders then such order shall not be announced unless the motion to withdraw is denied."

Mr. Russell motions the committee to approve the further amendments as discussed and to seek permission from the Supreme Court to be sent out for another comment period. Judge Dame seconded the motion and it passed unanimously.

5. Discussion & Action – Rule 12: Admission to Shelter Care; Rule 13: Shelter Hearings; and Rule 14: Reception of Referral; Preliminary Determination:
(Matthew Johnson & Janette White)

Mr. Fureigh indicates the only changes that are being proposed to Rule 12, Rule 13 and Rule 14 are the changes to reflect the new recodification of the statute. Janette White indicates Rule 12 was discussed during the last committee meeting whether it was necessary if it merely referenced the statute. Judge Dame indicates Rule 12 is a courtesy to those practitioners who are not very familiar with practice in juvenile court.

Judge Dame states Utah Code was stricken in Rule 14 and should stay in. Mr. Fureigh agrees. Matthew Johnson motions to send all three rules to the Supreme Court, to be effective September 1, 2022. Janette White seconded the motion and it passed unanimously.

6. Old business/new business: (All)

The items on the agenda that were not able to be addressed will be added to the agenda for June. The Petition regarding Rule 6 will also be added to the agenda.

Matthew Johnson indicates he will not be present at the next committee meeting. Judge Jensen asks if the committee meeting in June will continue to be held virtually. Mr. Fureigh indicates it will be and the committee discussed doing a hybrid version. This discussion will be added to the agenda next month to discuss how meetings will be handled in the future.

The meeting adjourned at 2:00 PM. The next meeting will be held on June 3, 2022 at 12:00 PM via Webex.