

Utah Rules of Juvenile Procedure Committee- Meeting Minutes

June 7, 2019

Noon to 2:00 p.m.

Education Room

MEETING DATE

TIME

LOCATION

MEMBERS:	Present	Absent	Excused	MEMBERS:	Present	Absent	Excused
Carol Verdoia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Daniel Gubler	<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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Judge Mary Manley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Daniel Meza Rincon for 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"/>
Trish Cassell	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Chris Yannelli	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Diaz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kristin Fadel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Fureigh	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AOC STAFF:	Present	Excused	GUESTS:	Present	Absent		
Katie Gregory	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Chief Justice Durrant	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Jean Pierce	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Joseph Wade	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Keegan Rank	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Jacqueline Carlton	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
				<input type="checkbox"/>	<input type="checkbox"/>		

AGENDA TOPIC

I. Welcome & Approval of Minutes		CHAIR: CAROL VERDOIA
<p>Carol Verdoia welcomed members and called for approval of the May minutes. Chief Justice Durrant addressed the Committee and provided a special recognition of Carol Verdoia’s years of service to the Committee. Ms. Verdoia has been a committee member for 23 years and has served as Chair for 22 years. She will conclude her service as Chair on June 30, 2019 and become an Emeritus Member of the Committee. David Fureigh will become the new Chair on July 1, 2019. Chief Justice Durrant thanked Ms. Verdoia and the members of Committee for their service. He also acknowledged Trish Cassell who is completing her term on the Committee.</p>		
Motion: To approve the minutes of May 3, 2019	By: Judge Manley	Second: Arek Butler
Approval	<input checked="" type="checkbox"/> Unanimous	<input type="checkbox"/> Vote: In Favor _____ Opposed _____

AGENDA TOPIC

II. Rule 9-Detention Hearings; scheduling; hearing procedure	CAROL VERDOIA
<p>Members reviewed the Committee’s discussions on revisions to Rule 9, which have been out for public comment on three occasions. The Committee is currently focused on two issues: 1) whether the standard for a youth to be detained after a warrantless arrest should be reasonable basis or probable cause; and 2) if a youth is detained on either standard, how soon must a hearing occur. The Board of Juvenile Court Judges has a subcommittee that is also reviewing issues pertaining to Rule 9.</p> <p>In addition to materials previously discussed, the Committee received a copy of a public comment from Judge Steven Beck dated April 18, 2019 and a legal memorandum from Juvenile Court Law Clerk, Jean Pierce, regarding the history of statutes governing warrantless arrests.</p>	

The Committee discussed whether it is appropriate to create a rule that conflicts with statute and detention hearing standards already in place. Questions were raised as to whether the issues discussed are procedural or substantive in nature. Additional discussion took place concerning the logistics of transport, detention hearing practice, video hearings and additional impacts to rural areas of the state versus concerns raised in the Third District.

The Committee tabled further discussion until the August 2, 2019 meeting to allow Sophia Moore and the Committee's two new members to be present for the discussion and to allow time for the Board's Subcommittee to provide its comments to the Committee.

Action Items:	Place the Rule 9 discussion on the agenda for August 2, 2019. Distribute any feedback received from the Board of Juvenile Court Judges' Rule 9 Subcommittee.
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AGENDA TOPIC

III. Tribal Participation in Juvenile Court	CAROL VERDOIA
<p>Arek Butler is continuing to work on a draft rule for presentation at a future meeting. Bridget Koza researched practices in other states and provided examples of notices or motions to intervene from Kansas and Alaska, which were included in the meeting materials. Katie Gregory distributed an additional form from California.</p> <p>Judge Lindsley also serves on the Court's Forms Committee and reviewed the process by which forms are approved for public posting. Members discussed current practices and processes tribes use to intervene and how a form on the Court's website might be utilized. The AG's office may also assist in facilitating the use of the form(s) by tribes. The Committee discussed what type of access in CARE is available to tribes who intervene in a case.</p> <p>Judge Lindsley will draft a proposed form or forms for Committee review. The Committee also considered that any form created should also contemplate the rule being drafted by Mr. Butler. Forms approved by the Committee must be reviewed by the Court's Forms Committee. Alisa Lee at DCFS may send approved forms to the tribes with whom she works on a regular basis.</p> <p>Katie Gregory will continue to work on communications with the Utah State Bar recommending the waiver of <i>pro hac vice</i> fees for tribal attorneys. Ms. Gregory will draft a proposed letter for consideration by the Supreme Court prior to approaching the appropriate Bar committee. Ms. Gregory will report back at a future meeting.</p>	
Action Items:	<ul style="list-style-type: none"> • Continue drafting tribal participation rule-Arek Butler • Draft form for intervention-Judge Lindsley • Prepare Letter to Bar regarding waiver of <i>pro hac vice</i> fees-Katie Gregory

AGENDA TOPIC

IV. Rule 27A-Admissibility of Statements Given by Minors	CAROL VERDOIA
<p>The Supreme Court requested the Committee consider policy issues related to the age at which juveniles are considered capable of waiving their <i>Miranda</i> rights and asked the Committee to consider several articles cited in footnote 6 to <i>R.G. v. State</i>, 416 P.3d 478 (Utah 2017).</p> <p>The following points were discussed:</p> <ul style="list-style-type: none"> • The current rule does not prevent an attorney from filing a Motion to Suppress and arguing 	

the waiver is not valid. Most of the literature suggested to the Committee expressed a need to rewrite *Miranda* warnings and make them more understandable to youth. The Committee is not in the position to rewrite *Miranda* warnings.

- Whether or not there should be an age limit to the protection given to youth in the Rule and what the Supreme Court meant in its comments in the *R.G.* case. Discussion included a consideration of the impact on law enforcement.
- Having a parent present during a police interview is not always helpful to the juvenile since some parents pressure the youth to admit, etc.
- Some children in foster care experience trauma by being interrogated, even if the evidence is later suppressed. Statute does not allow DCFS to consent for a child in foster care and a GAL should be present when possible.
- Many thought that the issues presented in the suggested literature was already taken into consideration when previous changes were made to the Rule. A Motion to Suppress gives the court the opportunity to look at each case and waiver on an individual basis to decide validity.

The Committee decided that it would relay to the Supreme Court that the Committee reviewed the literature, but feels absent a rewrite of the entire *Miranda* warning itself, the issues raised in the literature will not be resolved. Further, the Committee was unable to come to a consensus about whether an age cut off is appropriate. Protections exist through the procedure for filing a motion to suppress when an interrogation is inappropriate. Further, removing paragraph (a)(2) is needed to eliminate the potential for an unconstitutional burden shift to the juvenile. Law enforcement is trained on the issues and if the waiver is not valid, a motion to suppress can be filed. When a Motion to Suppress is filed in a case, the court closely examines the standard set in case law when deciding whether a waiver is valid.

Action Item:

Carol Verdoia will report the Committee's discussions to the Supreme Court.