Utah Rules of Juvenile Procedure Committee- Meeting Minutes

August 2, 2	2019 N	oon to 2:00 p.m.	Conference Rooms B & C
MEETING D	ATE T:	IME	LOCATION
MEMBERS:	Present Absent Excused	MEMBERS:	Present Absent Excused
David Fureigh		Michelle Jeffs	
Judge Elizabeth Lindsley		Sophia Moore	
Judge Mary Manley		Mikelle Ostler	
Arek Butler		Jordan Putnam	
Monica Diaz		Janette White	
Kristin Fadel		Chris Yannelli	
Daniel Gubler		Carol Verdoia (Non-voting Emeritus Member)	
AOC STAFF:	Present Excused	GUESTS:	Present Absent
Katie Gregory		Jacqueline Carlton	
Jean Pierce		Joseph Wade	
Keegan Rank		Judge Steven Beck	
AGENDA TOPIC			
I. Welcome & Approval	of Minutes	CHAIR: DAVID FUREIGH	
David Fureigh welcomed members and introduced new members Michelle Jeffs and Janette White. All members completed the professional practice disclosures required by Rule 11-101 of the Supreme Court Rules of Professional Practice. The committee approved the minutes of June			

David Fureigh welcomed members and introduced new members Michelle Jeffs and Janette White. All members completed the professional practice disclosures required by Rule 11-101 of the Supreme Court Rules of Professional Practice. The committee approved the minutes of June 7, 2019 as written.		
Motion: To approve the minutes of June 7, 2019	By: Judge Manley	Second: Daniel Gubler
Approval	☐ Unanimous ☐ '	Vote: In Favor Opposed

AGENDA TOPIC

710=11=71 101=0	
II. Rule 27A-Admissibility of Statements Given	DAVID FUREIGH
by Minors	

David Fureigh reviewed the history of the Committee's work on Rule 27A and recent instructions received from the Supreme Court. At the last meeting the Committee considered policy issues regarding the age distinctions set forth in Rule 27A and the Supreme Court's request that members consider the articles cited in *In re R.G. v. State*, footnote 6 regarding juvenile brain development. The Supreme Court declined the Committee's request to delete paragraph (a)(2) regarding minors 14 years of age and older. The Court requested that the Committee rephrase the paragraph in more neutral terms to meet the Committee's concerns about any unconstitutional burden shifting in the original language of paragraph (a)(2).

Judge Lindsley made a motion to:

- 1) Reinstate the numbering of paragraph (a)(1) and (a)(2), which was deleted in the prior draft:
- 2) Replace the previously deleted language of (a)(2) with the following new language: "If the minor is 14 years of age or older, a parent, guardian, or legal custodian does not

need to be present during the waiver."

3) Revise paragraph (b) to read: "The presumption outlined in paragraph (a)(1) may be overcome by a preponderance of the evidence showing the ability of a minor to comprehend and waive the minor's rights."

Michelle Jeffs seconded the motion. The Committee discussed the proposal and alternatives, emphasizing the importance of simplicity and clarity for law enforcement. Some members expressed concern regarding whether the revised language would discourage law enforcement from seeking to have a parent present during questioning. Members also considered adding an Advisory Committee note, but ultimately determined it could be more confusing than helpful.

The Committee voted in favor of the motion by a vote of 8 to 3 with Ms. Moore, Ms. Diaz and Mr. Gubler voting against the motion.

Action Item:	Review the revisions to Rule 27A with the Supreme Court and seek further direction.		
1) Motion: to reinstate the numbering of paragraph (a)(1) and (a)(2), which was deleted in the prior draft;	Ву:	Judge Lindsley	Second: Michelle Jeffs
2) Replace the previously deleted language of (a)(2) with the following new language: "If the minor is 14 years of age or older, a parent, guardian, or legal custodian does not need to be present during the waiver."			
3) Revise paragraph (b) to read: "The presumption outlined in paragraph (a)(1) may be overcome by a preponderance of the evidence showing the ability of a minor to comprehend and waive the minor's rights."			
Approval		Inanimous a Moore, Monica	Favor 8: Opposed 3 (with niel Gubler voting in opposition).

III. Rule 9-Detention hearings; scheduling;	DAVID FUREIGH
hearing procedures	

Carol Verdoia reviewed prior discussions with the Supreme Court regarding the history of Rule 9 and the timeline of the rule's review, as well as the Committee's desire to hear from the Board of Juvenile Court Judges' subcommittee on Rule 9 prior to making further revisions. Recently the Board issued a memo stating its position on the Rule 9 issues, which was presented to all members of the Committee and attached to the meeting packet. The current amendments to Rule 9 contained in the meeting packet include both the approved amendments to the rule and the language sent out for comment to date. Ms. Gregory provided a brief overview of the work of the Board and its Rule 9 subcommittee.

The Committee first discussed whether to add a new paragraph (b) providing for judicial review with 24 hours when a minor is admitted into a detention facility without a warrant. Members agreed to bifurcate the discussion and consider the appropriate standard of review for the admission later in the meeting.

Monica Diaz made a motion to create a new paragraph (b) stating "If a minor is admitted into a detention facility without a warrant, the court shall make a determination whether there is a reasonable basis for admission within 24 hours including weekends and holidays" and to renumber subsequent paragraphs. Sophia Moore seconded the motion. The motion passed on a vote of 9 to 2, with Judge Lindsley and Judge Manley voting against the motion.

Katie Gregory reminded members of the Supreme Court's request that Advisory Committee's consider the impact of rule changes on court programming resources. The Committee had a lengthy discussion on how a 24-hour review could work in practice. Judge Manley reviewed the district court practice for adults, which was utilized in Seventh District prior to the current probable cause process.

Sophia Moore introduced a discussion on whether the standard should be probable cause, reasonable basis or reasonable grounds. Members reviewed the Memorandum from the Board of Juvenile Court Judges, which recommended that the standard not be changed to probable cause to avoid the rule conflicting with 78A-6-112. However, members also noted that the statutory standard in 78A-6-112 is "reasonable grounds" rather than "reasonable basis." The case of *State v. Velasquez*, 372 P.2d 1259 (Utah 1983) describes reasonable grounds as a "middle ground approach" more akin to a reasonable suspicion. Several members expressed that reasonable basis and reasonable grounds were not different standards, but that a reasonable grounds standard was preferable because it is defined in case law and used in statute.

Arek Butler made a motion to change all references in Rule 9 from "reasonable basis" to "reasonable grounds." Michelle Jeffs seconded the motion and it passed unanimously. Monica Diaz was not present for the vote.

Action Item:	circulate it to all member David Fureigh will then	coday's revisions to the Rule 9 draft and ers by email for a quick review. She and discuss the draft with the Supreme Court to send it out for an additional 45-day
Motion #1: to create a new paragraph (b) stating "If a minor is admitted into a detention facility without a warrant, the court shall make a	By: Monica Diaz	Second: Sophia Moore

determination whether there is a reasonable basis for admission within 24 hours including weekends and holidays" and to renumber subsequent paragraphs.	
Approval	☐ Unanimous × Vote:
	# In Favor 9: # Opposed 2 (with Judge
	Manley and Judge Lindsley voting in opposition)
Motion #2: to change all references in Rule 9 from "reasonable basis" to "reasonable grounds."	By: Arek Butler Second: Michelle Jeffs
Approval	\times Unanimous (Ms. Diaz had left the meeting and was absent for the vote).

AGENDA TOPIC

IV. Old or New Business	DAVID FUREIGH
The issue of tribal participation will be place on the	ne agenda for the September 6, 2019 meeting.

[Staff Note: The September 6 meeting was later cancelled and postponed to October 4, 2019]