Utah Rules of Juvenile Procedure Committee- Meeting Minutes

November 1, 2019	Noon to 2:00 p.m.	Conference Room A
MEETING DATE	TIME	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 (Emeritus)	☒	☐	☐
AOC STAFF:	**Present**	**Excused**		**GUESTS:**	**Present**	**Absent**	
Katie Gregory	☒	☐		Joseph Wade	☒	☐	
Jean Pierce	☒	☐		Judge Steven Beck	☒	☐	
Keegan Rank	☒	☐			☐	☐	

AGENDA TOPIC

I. Welcome & Approval of Minutes	**CHAIR: KATIE GREGORY FOR DAVID FUREIGH**
David Fureigh was briefly delayed in a court hearing so Katie Gregory welcomed members and called for approval of the minutes of August 2, 2019.	
Motion: To approve the minutes of August 2, 2019	By: Judge Lindsley Second: Michelle Jeffs
Approval	☒ Unanimous ☐ Vote: In Favor_____ Opposed _____

AGENDA TOPIC

II. Rule 27A-Admissibility of Statements Given by Minors	**DAVID FUREIGH**

- The Committee discussed the lengthy history of its work on Rule 27A and prior instructions from the Supreme Court. The Supreme Court declined to approve the most recent proposed revisions. On October 22, 2019, the Supreme Court sent an email to the Committee chair requesting that the Committee deliberate on five specific questions pertaining to Rule 27A. The questions were sent out to the Committee before the meeting and are contained in the agenda packet.
- Ms. Diaz expressed that she would like additional time to further research and prepare before definitively stating her viewpoint on the questions.
- Judge Lindsley reviewed how common law used the age of 14 to treat children as adults and how this principle has carried over into today's laws. The 14 year age distinction is evident in criminal statutes such as the statute on sexual abuse of a child and other statutes in which crimes are so egregious that more protection is given to children under 14.
- Statutorily the age of 14 is still a major distinction and is the age the court is to consider the child's preference of where to live in custody disputes.

- Ms. Diaz expressed the opinion that common law should no longer be the controlling factor because scientific studies on adolescent brain development show that a minor's brain continues to develop beyond teenage years.
- Ms. Pierce reviewed her research on the history of Rule 27A and how the rule came about. Ms. Verdoia expanded on the history of Rule 27A from notes of committee meetings that she chaired at the time Rule 27A was drafted between 1997 and 2000. Scientific studies regarding a youth's age were not considered when the rule was established.
- Discussion took place on how adults have the added protection contained in Rule 616 of the Rules of Evidence, which requires that custodial interrogations must be recorded to be admitted in a felony criminal prosecution. Rule 616 does not currently apply to juveniles.
- Mr. Rank went over research he had done to survey other state statutes, rules, and case law on the admissibility of a minor's statement. Fifteen states, including Utah, have an age distinction, 30 states do not have an age distinction and do not require a parent present, and about five states require a parent present up to the age of 18 for interrogation. Utah is the only state where the issue is governed by a rule rather than statute or case law.
- Discussion ensued on how the research is mixed and there is no concrete and definitive answer as to how best to protect juveniles during custodial interrogation. The Committee suggested that a summary of the research studied by the Committee may be helpful to give to the Supreme Court.
- The Committee came to the consensus that eliminating the age distinction would mean less protection for children, which is not the desired outcome. No members were in favor of this option. Eliminating the age distinction would most likely create more litigation on the validity of waivers.
- Ms. Diaz expressed the opinion that she would like the rule to mandate a parent must be present for all waivers to be valid for juveniles under the age of 18.
- Judge Manley expressed her concern that the child's age is a substantive issue that should not be decided in a rule.
- Judge Lindsley suggested research should be done into the adult procedure contained in Rule 616 of the Rules of Evidence. Ms. Gregory will contact the State Law Library about the ability to access minutes from the Advisory Committee on the Rules of Evidence and any discussion of the history of this requirement in Rule 616.
- Ms. Jeffs and Mr. Yannelli will review the Utah statutes to identify laws where a 14 year old age distinction is made.
- Discussion took place on other factors, such as the impact on law enforcement, which needs to be considered before changes are made to Rule 27A.

Action Item:	Katie Gregory will forward to Committee members an email she received from Carol Verdoia containing historical information on the drafting of Rule 27A. The Committee will continue discussions on Rule 27A at its next meeting, including further discussion on the questions sent to the Committee by the Supreme Court.

AGENDA TOPIC

III. Rule 9-Detention Hearings; scheduling; hearing procedure	**DAVID FUREIGH**

- Mr. Fureigh reviewed the discussion that took place with the Supreme Court on proposed revisions to Rule 9. The Court did not approve the Committee's proposed revisions.
- The Supreme Court requested the Committee provide additional information on why it selected a reasonable grounds standard rather than probable cause. The Supreme Court suggested the Committee either change the Rule's references to a standard of probable cause, or leave the standard of reasonable grounds and explain in an Advisory Committee note that the two standards are essentially the same. The reasonable grounds standard was proposed by the Committee because this is the standard stated in statute. The Committee discussed other safeguards in place such as the use of the Detention Risk Assessment Tool (DRAT), which is administered to all youth prior to admission to detention.
- The Supreme Court questioned whether a lesser standard is appropriate for juveniles. Discussion ensued on how the issue is substantive in nature and that perhaps this is not an issue that should be decided in a rule.
- In the meantime, Committee members agreed that it should move forward with a rule that is consistent with the statute on the other issues contained in Rule 9. The Committee considered whether to request that the Supreme Court send out for comment the other revisions to Rule 9 related to HB 239 while the issue of what standard to use is given more discussion. The Committee concluded that the research done about the reasonable grounds standard issue should be sent to the Supreme Court.

Action Item:	David Fureigh and Katie Gregory will address Rule 9 with the Supreme Court to seek additional guidance on the standard and to request that the remainder of the revisions to Rule 9 be sent out for public comment while the standards issue is resolved.

AGENDA TOPIC

IV. Continued Discussion of Tribal Participation in Juvenile Court	**KATIE GREGORY**

- Ms. Gregory discussed the letter she drafted with the assistance of Bridget Koza to be sent to the Utah State Bar. The letter recommendations waiving *pro hac vice* fees and the requirement to associate local counsel for attorneys who represent a tribe in child-custody proceedings subject to ICWA.
- Discussion took place on how the letter did not specifically limit the cases to juvenile court because district court also has ICWA cases. This is why the letter uses the broader term of "child-custody proceedings subject to ICWA."
- The eight other states that allow for *pro hac vice* fees and/or the requirement to associate local counsel to be waived in such cases are listed in the letter.
- Judge Manley made a motion to approve the letter to be sent to the Utah Supreme Court for authorization to send the letter on to the Utah State Bar for consideration. Judge Lindsley seconded the motion.
- Mr. Butler proposed a friendly amendment to the motion to add the phrase "in state child-custody proceedings subject to ICWA" to the last paragraph of the letter. Judge Manley accepted the amendment and the motion as amended passed unanimously.

Action Item:	Katie Gregory will revise the draft letter and forward it to the Supreme Court for consideration.

Motion: To approve the letter to be sent to the Utah Supreme Court for authorization to send the letter on to the Utah State Bar for consideration.	By: Judge Manley Second: Judge Lindsley
Approval	× Unanimous □ Vote: # In Favor_____ # Opposed _____

AGENDA TOPIC

V. Old or New Business	ALL
The next meeting is scheduled on December 6, 2019 from Noon to 2:00 p.m. The Committee set the following dates for meetings in 2020: January 3, February 7, March 6, April 3, May 1, and June 5. All meetings will be held from Noon to 2:00 p.m.	