



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: August 6, 2021

Time: 12:00 pm – 2:00 pm

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

1. Welcome and approval of the June 4, 2021 minutes: (David Fureigh)

David Fureigh welcomed Judge Debra Jensen and Judge Paul Dame to the Committee. David also noted that the Committee has been trying to find a replacement for Judge Diaz, but there have been no qualified applicants.

Nick Stiles, Appellate Court Administrative, further spoke on finding a replacement for Judge Diaz to represent the perspective of juvenile defense. Nick stated that the vacancy announcement was sent to the Bar twice, and the Committee had the option of sending out a third vacancy announcement or leaving the spot vacant for this cycle. Judge Diaz recommended a general email to the Bar and a targeted email to juvenile defense attorneys. Bridget noted that Rule 11-101 permits solicitation. Nick and Bridget will work to have the vacancy announced a third time as well as work with the Indigent Defense Commission to have a targeted email sent to juvenile defense attorneys.

The Committee agreed to send out a third announcement to the Bar and to allow members to independently solicit individuals for the position.

The Committee then proceeded with introductions for the new members 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 Jensen moved to approve the June 4, 2021 meeting minutes. Janette White seconded the motion, and it passed unanimously.

2. Action: Rule 21: Warrant of arrest or summons in cases under Utah Code section 78A-6-703.3 and Rule 37: Child Protective Orders: (Bridget Koza)

Bridget Koza noted that Rule 21 and Rule 37, which were updated to conform to H.B. 285 and H.B. 255, had been sent out for comment. There were no comments to

either rule, so the rules needed to be finalized by the committee and sent to Supreme Court for final approval.

Judge Paul Dame suggested to remove the sentence in Rule 37(d), at line 16, beginning “[s]ubject to the limitations under the law [. . .].” Judge Dame commented that this provision of Rule 37(d) conflicts with statute. The statute does not allow for the appointment of counsel for indigent parents in private petitions, but the rule could be interpreted to allow for the appointment of counsel in such cases. Judge Dame further noted that the statute trumps the rule, because the right to counsel is a substantive issue.

Carol Verdoia noted that the statute does not explicitly prohibit judges from appointing counsel for indigent parents in private petitions, and this rule gives judges the discretion to do so. Kristen Fadel additionally noted that Rule 37(d) only permits the appointment of counsel for an indigent “parent, guardian or custodian,” but respondents can also be minors, so there is also the issue of whether minors can be appointed counsel under 37(d).

The committee agreed to continue discussing this agenda item and agreed that the agenda item will be put on the September 3, 2021 meeting. Bridget Koza will include previous discussions the committee had on Rule 37 in the meeting packet for review.

David Fureigh discussed with the committee whether Rule 21 can be finalized for and sent to the Supreme Court for final publication. The committee agreed it could be finalized.

Judge Dame moved to request that the Supreme Court approve Rule 21 (Draft June 3, 2021) for final publication on expedited basis to go into effect September 1, 2021. Janette White seconded the motion, and it passed unanimously.

3. Discussion & Action: Supreme Court Conference Update – Rules 8, 27A, and 55:

(David Fureigh)

David Fureigh discussed with the committee Rules 8, 27A, and 55 that the Supreme Court sent back to the committee. David remarked that the Supreme Court did not think any substantive provisions should be included within the Rules. David also noted that the Supreme Court thought Rule 27A is more of an evidentiary rule than a procedural rule and should be discussed with the Rules of Evidence Advisory committee.

The committee briefly discussed the difference between an interview and an interrogation as it applies to Rule 8 but then proceeded to have a lengthy discussion on whether Rules 8, 27A, and 55 should be deleted, since they are duplicative of what is in the statute. David noted that during previous discussions the committee thought it would be useful to keep the rules for those who rely on them. The committee then considered whether to revise the rules to reference the statute. Bridget shared suggested changes to Rule 55 from Judge Manley that removed substantive language and referenced the statute. The suggestions were to change:

Rule 55(a) to “[a] minor under 18 years of age may not be held at a correction facility except as provided in Utah Code sections 80-6-502, 80-6-504 or 80-6-505;” and

Rule 55(b) to “[a] minor under 18 years of age received at a correctional facility, shall be transferred to a detention facility pursuant to Utah Code Section 80-6-204, except as otherwise provided by law.”

Judge Dame commented that referencing the statute could mislead individuals into believing the Rules will guide them to a statutory provision. Janette White remarked that there is no need for a rule if it only refers to the statute, and Michelle Jeffs agreed that the rules are duplicative.

The committee agreed to continue discussing this agenda item and agreed that the agenda item will be put on the September 3, 2021 meeting. Bridget Koza will include in the meeting packet

the statutory language so the committee can review it before determining whether the Rules should be repealed. Jordan Putam left meeting at 12:59pm.

4. Action: Rule 44: Findings and conclusions: (Carol Verdoia)

Carol Verdoia discussed with the committee proposed changes to Rule 44. Carol noted that the statutory references in Rule 44 had been changed to conform to the H.B. 285 Juvenile Code Recodification as well as updated the outdated language of “permanent deprivation,” at line 14, to “termination of parental rights.”

Carol then proposed two additional revisions to Rule 44. H.B. 285 Juvenile Code Recodification removed language about needing a final order for abuse, neglect, and dependency findings and considering appellate law suggested adding “abuse, neglect, dependency” in paragraph (b), at line 14, of the Rule. Carol also suggested adding “contested adoptions” to paragraph (b), at line 15, since a written final order with findings of fact and conclusions of law is also required in those cases.

Judge Dame suggested adding competency determinations as a type of proceeding where a final written order is needed. Bridget added the competency determination reference, 80-6-402, before “80-6-503” in paragraph (b) of the Rule. Sophia Moore suggested adding the language “any final and appealable order requires findings of fact,” but Judge Dame noted that this conflicts with the statute. The committee not to make this addition.

Judge Paul Dame moved to present the revised Rule 44 (Draft August 6, 2021) to the Supreme Court for approval to publish for public comment. Sophia Moore seconded the motion, and it passed unanimously.

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

Sophia Moore and Mathew Johnson discussed with the committee changes to Rule 45. Sophia remarked that they attempted to break up dispositional reports for delinquency cases and abuse, neglect, and dependency cases.

Judge Dame noted that an “e” was missing from “ex parte,” at line 35. Judge Dame also asked why the provision “and for the purpose of establishing the fact of neglect or dependency” was removed from lines 26-27 of the rule. Matthew Johnson remarked that this language was removed, because a finding of abuse, neglect, or dependency is not made at disposition. Judge Dame then asked whether there is anything in the rules that will allow the court to consider dispositional reports for the purposes of abuse, neglect, and dependency. Janette White commented that reports should not be submitted without the proper foundation, and that the court must follow the rules of evidence. Carol Verdoia also remarked that the court should not be allowed to consider dispositional reports for findings of fact.

Bridget also noted that “business days” was added in paragraph (a)(4) of the rule.

Judge Jensen then asked why paragraph (b)(3) was added to the rule, and Judge Dame clarified that the language of paragraph (b)(3) is in the statute. The committee then discussed whether this paragraph should be deleted, since it is included within the statute. The committee agreed it may be beneficial to keep the language of paragraph (b)(3) to clarify what report is being talked about and decided to merge paragraph (b)(3) and paragraph (b)(2). The committee proceeded to discuss where the language of paragraphs (b)(3) and (b)(2) were moved to in the recodification but could not agree on the proper citations.

The committee agreed to continue discussing this agenda item and agreed that the agenda item will be put on the September 3, 2021 meeting so that committee can review H.B. 285 Juvenile Code Recodification before the next meeting.

6. Action: Rule 3: Style of pleadings and forms: (Bridget Koza)

Bridget Koza discussed with the committee changes to Rule 3 to update captions for protective order cases and domestic relation cases transferred from district court. Bridget noted that the rule went out for comment, but there were no comments to the rule.

Bridget asked the committee whether the rule should be further revised to conform to changes in Utah Rule of Civil Procedure 10 [Effective May 1, 2022], which changes the formatting of captions in domestic relation cases. After discussing that district court cases are widely available while juvenile court cases are not, the committee agreed not to make further changes to Rule 3.

Matthew Johnson moved to request that the Supreme Court approve Rule 3 (Draft May 6, 2021) for final publication on November 1, 2021. Judge Paul Dame seconded the motion, and it passed unanimously.

7. 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 September 3, 2021 meeting.

8. 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 August 6, 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 August 6, 2021 meeting.

10. Old/New Business: (All)

The committee discussed whether to move the September 3rd meeting because of the Holiday weekend. Bridget agreed to see how many committee members would be available for the September 3rd meeting.

The meeting adjourned at 2:00 pm. The next meeting will be held on September 1, 2021 at 12:00 pm via Webex.