



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

Approved Meeting Minutes

David W. Fureigh, Chair

Webex Meeting:
Location: <https://utcourts.webex.com/utcourts/j.php?MTID=m60614e94398c691ccac151892d1f861d>
Date: November 5, 2021
Time: 12:00 pm – 2:00 pm

<u>Attendees:</u> David Fureigh, Chair Judge Paul Dame Michelle Jeffs (arrived 12:30 pm) Judge Debra Jensen Matthew Johnson Sophia Moore Jordan Putnam Mikelle Ostler William Russell Janette White Carol Verdoia, Emeritus Member	<u>Excused Members:</u> Arek Butler Kristin Fadel Chris Yanelli
<u>Staff:</u> Bridget Koza Meg Sternitzky, Juvenile Court Law Clerk Savannah Schoon, Juvenile Court Law Clerk	<u>Guests:</u> Chris Williams, Office of Legislative Research and General Counsel

1. Welcome and approval of the October 1, 2021 Meeting minutes: (David Fureigh)

David Fureigh welcomed everyone to the meeting and asked for approval of the October 1, 2021 meeting minutes.

Judge Debra Jensen moved to approve the October 1, 2021 meeting minutes. Judge Paul Dame seconded the motion, and it passed unanimously.

2. Discussion: Rule 60: Judicial bypass procedure to authorize minor to consent to an abortion: (Judge Paul Dame)

David Fureigh provided background information for the committee's continued discussion about the time frames in paragraph d. He noted that previous proposed changes to the time frames was to exclude counting weekends and holidays. The language was approved by the Supreme Court and went out for comment. Comments were received from the ACLU and Planned Parenthood regarding concerns about the proposed change.

Judge Dame discussed with the committee that prior to November 1, 2018, Rule 60 read in conjunction with Rule 4, allowed the court to exclude weekends and holidays from the time frames in paragraph e. On November 1, 2018, Rule 4 was changed to include weekends and holidays which inadvertently changed the timeframe under Rule 60. Judge Dame noted that proposed change to excluding weekends and holidays from the time period would give Guardians ad Litem the necessary time to meet with the petitioner, and give the court time to resolve the petition. The committee had a lengthy discussion about how the proposed time frame would affect when a petition would be resolved depending on what day it was filed and if there an intervening on holiday during the time frame. The committee also discussed when the hearing required under paragraph d is scheduled and it depends on the court's calendar but typically on the second or third day after the petition is filed. David Fureigh suggested that he reach out to Planned Parenthood and the ACLU to explain the reasoning being the proposed change before the committee finalize it.

The committee agreed that David will contact the ACLU and Planned Parenthood to let them know the reasoning behind the proposed change to Rule 60, and the committee agreed that the agenda item will be put on the December 3, 2021 meeting.

3. Action: Rule 44: Findings and conclusion: (David Fureigh)

David Fureigh discussed with the committee that Rule 44 was updated with new statutory references due to the Juvenile Code Recodification and updating outdated language. Rule 44 went out for comment and no comments were received. Judge Dame noted that the statutory references in paragraph e are not sequential and suggested listing them in sequential order. The committee agreed to the change.

Matthew Johnson motioned to present the revised Rule 44 (Draft November 5, 2021) with the change of statutory references being in sequential order in paragraph e to the Supreme Court for final publication. Janette White seconded the motion and it passed unanimously.

4. Discussion & Action: Rule 8: Rights of minors while in detention: (David Fureigh)

David Fureigh reviewed the committee the proposed changes to Rule 8 that were discussed at the October 1, 2021 meeting and discussed with the committee whether the Advisory Committee Note needs to be included in the Rule with the proposed changes. The note has been there since Rule 8 was finalized in January 1995. David noted that there were two original purposes for the note: (1) to let practitioners know that Rule 8 was previously Rule 10, and (2) to set forth rights that were not in other administrative rules or statute. He stated, however, that because the rights in Rule are now in statute the note might not be necessary. Bill Russell agreed that the note was superfluous. Carol Verdoia spoke with Brett Peterson, the Juvenile Justice Service Division Director, about the note and he did not think that the cross reference to Administrative Rule R547-13-1 was necessary.

Bill Russell motioned to eliminate the Advisory Committee Note to Rule 8. Sophia Moore seconded the motion and it passed unanimously.

The committee had further discussions about whether paragraph b should be kept in the rule and the committee agreed to leave it in.

Judge Dame motioned to present the revised Rule 8 (Draft November 5, 2021) to the Supreme Court for approval to be sent out for an initial 45-day comment period. Matthew Johnson seconded the motion and it passed unanimously.

5. Discussion: Rule 25: Pleas and Rule 25A: Withdrawal of Plea: (Bridget Koza)

Bridget Koza discussed with the committee whether Rule 25 and 25A should be revised since most of the language is now in statute due to the Juvenile Code Recodification. Judge Dame pointed out that for Rule 25 – paragraph a is duplicative of Utah Code section 80-6-306(1), (3) and (4); paragraph d is duplicative in 80-6-306(5); and paragraph f is similar to 80-6-306(2). Mikelle Ostler mentioned that in the Juvenile Court’s case management system (C.A.R.E.) there are references to Rule 25(f) in dispositions and hearing types. The committee then discussed whether paragraph f should remain Rule 25 since there is a slight difference with a motion to dismiss the plea held in abeyance being required under the Rule and not statute. Judge Dame noted that under the rule a motion is required to dismiss the plea, whereas under 80-6-306, a motion is not required and the court may dismiss it on its own. The committee then discussed the implications of requiring a motion to dismiss the charge. Bridget agreed to redline Rule 25 with proposed revisions to remove paragraph a, d, and f so the committee can discuss at the December 3, 2021 meeting.

Bill Russell motioned to have delete paragraphs a, d, and f from Rule 25 and discuss further at the December 3, 2021 meeting. Judge Dame seconded the motion and it passed unanimously.

The committee then discussed Rule 25A. Judge Dame suggested repealing Rule 25A since it is duplicative of Utah Code section 80-6-306(7)-(9). Bridget agreed to redline Rule 25A with the proposed change to repeal it so the committee can discuss at the December 3, 2021 meeting.

The committee agreed to review proposed changes to Rule 25 and 25A and agreed that the agenda item will be put on the December 3, 2021 meeting.

Sophia Moore left the meeting at 12:51 pm.

6. 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)

David Fureigh reviewed with the committee amending Rule 7 to allow for ex parte motions to vacate runaway E-warrants for youth in DCFS custody. Bridget Koza noted that the reason for amending the rule is because you can only have ex parte motions that have been authorized by statute or rule. The amendment would address situations where there is not a hearing coming up, but the warrant needs to be vacated because the youth has active warrants and has returned to placement, aged out and DCFS custody is terminated, court jurisdiction is terminated, or a new E-warrant is needed for a different return location. Carol Verdoia agreed, and stated that these scenarios happen often, and allowing ex parte motions would be more efficient and ensure there runaway warrants that aren't valid or necessary are still on the Utah Criminal Justice Information System. Judge Dame inquired as to whether anyone from the Guardian ad Litem's office would have any concerns with such ex parte motions. Matthew Johnson stated that he doesn't believe there would be any concerns. Carol noted that the cross references in Rule 7 might need to updated to address that child welfare warrants are in Utah Code Section 62A. Janette White agreed to draft proposed language for the committee to consider adding to the rule. Bill Russell suggested the paragraph be added after subpart (g).

The committee agreed that Janette would draft proposed language for the committee at the December 3, 2021 meeting.

7. Discussion: Changes to Civil Rules 5, 7A, 7B, and 10 and Impact on Juvenile Rules: (Bridget Koza)

Bridget Koza reviewed with the committee that there have been changes to Rules 5, 7A, 7B, and 10 of the Rules of Civil Procedure and if these changes have any affect on the Juvenile Rules. Also, Juvenile Rule 2 states that Rules of Civil Procedure will apply

as long as they are not inconsistent with the Juvenile Rules, and Bridget mentioned that it might be worth it for the committee to consider amending Rule 2 to specifically state which Rules of Civil Procedure apply in Juvenile Court so there isn't confusion and given all the changes that have been made to the Rules of Civil Procedure.

Judge Jensen stated that there has been a lot of confusion among attorneys, and it might be necessary to create incorporate specific language in the Juvenile Rules. Matthew Johnson added that the Juvenile Rules should have their own specification as to filing because the Rules of Civil Procedure are changing constantly. Bridget informed the committee that other states specifically mention which Rules of Civil Procedure apply in Juvenile Court. Janette agreed that a rule that specifically states which Rules of Civil Procedure apply in Juvenile Court would be helpful. Carol Verdoia noted that there is confusion about whether the Rules of Civil Procedure, specifically around discovery, apply in substantiation proceedings so it should also be looked into. Judge Dame also stated that Rule 2 should be reviewed since there is confusion about which Rules of Civil Procedure and Rules of Criminal Procedure apply in delinquency proceedings. Judge Dame also inquired about the changes to Civil Rules 7A and 7B. Bridget stated she would pull committee meeting notes so the committee can review at the December 3, 2021 meeting. Jordan Putnam added that the changes were meant to make things easier for pro se parties.

The committee agreed that the agenda item will be put on the December 3, 2021 meeting.

The committee did not have any new or old business. The meeting adjourned at 1:56 pm. The next meeting will be held on December 3, 2021, at 12 pm via Webex.