



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

Meeting Minutes

David W. Fureigh, Chair

Location: Webex Meeting

Date: November 4, 2022

Time: 12:00 p.m. – 2:00 p.m.

<u>Attendees:</u> David Fureigh, Chair Judge Paul Dame Judge Debra Jensen Jordan Putnam Sophia Moore Matthew Johnson Arek Butler William Russell Michelle Jeffs Janette White Chris Yannelli Kristin Fadel Carol Verdoia, Emeritus Member	<u>Excused Members:</u> Mikelle Ostler
	<u>Guests:</u> Judge Michael Leavitt Jacqueline Carlton Cade Stubbs Blake Murdoch
Staff: Raymundo Gallardo Kiley Tilby, Recording Secretary Savannah Schoon, Juvenile Court Law Clerk	

1. Welcome and approval of the October 7, 2022 Meeting Minutes: (David Fureigh)

David Fureigh welcomed everyone to the meeting and introduced the guests, Cade Stubbs and Judge Leavitt. Mr. Stubbs is a clerk for the 5th district court and is filling in for Mikelle Ostler. Judge Leavitt is a member of the Rules of Evidence committee and is present to discuss the first agenda item.

Mr. Fureigh announced that the two law clerks from the AOC are leaving. Mr. Fureigh indicated that the law clerks have participated in the committee and helped in research and do a lot of work behind the scenes. Mr. Fureigh thanked them for all they have done for the committee. Mr. Fureigh indicated the AOC is planning on hiring additional law clerks, but if any research projects come up before they are hired, the research will fall back on the committee and the committee resources.

Mr. Fureigh then asked for approval of the October 7, 2022, meeting minutes. Judge Jensen moves to approve the minutes. Matthew Johnson seconded the motion, and it passed unanimously.

2. Discussion - Rules of Evidence and Rules of Juvenile Procedure: (Judge Leavitt)

David Fureigh stated the Rules of Evidence committee has proposed changes to the Rules of Evidence to eliminate any reference to juvenile courts throughout the Rules of Evidence. Judge Leavitt is a member of the Rules of Evidence committee and asked to attend the meeting to discuss the changes and get feedback from the Rules of Juvenile Procedure committee.

Judge Leavitt first expressed gratitude to the committee for their work to ensure procedures are clear and fair. Judge Leavitt indicated he became a member of the Rules of Evidence committee in March. At that time, an amendment had been proposed to Rule 412 of the Rules of Evidence to add that the rule was applicable to juvenile delinquency proceedings. The amendment went out for comment and became effective on November 1, 2022. Judge Leavitt stated the amendment brought up an important issue of whether the Rules of Evidence committee needed to clarify how the rules of evidence apply in juvenile court proceedings.

Judge Leavitt stated he began to research the issue and indicated there are only two rules in the Utah Rules of Evidence that specifically reference juvenile court proceedings - Rule 412 and Rule 615(e). Judge Leavitt further stated Rule 1101 of the Utah Rules of Evidence doesn't specifically reference juvenile court proceedings, but indicates the rules apply to all actions unless otherwise provided in subsections (c) and (d). Judge Leavitt would propose that all references to juvenile court proceedings outlined in the Rules of Evidence be removed, and that Rule 1101 and possibly Rule 101 be amended to include the applicability in

juvenile court proceedings. The Rules of Juvenile Procedure committee would then be left with the authority under Rule 43 of the Rules of Juvenile Procedure to make whatever specific references to the Rules of Evidence they believe should apply to juvenile court. Judge Leavitt indicated the purpose of his appearance at the committee meeting is to introduce the idea to the members and get feedback on the proposed changes.

Matthew Johnson inquired if there had been pushback that indicated a need to amend Rule 101 or 1101 of the Rules of Evidence. Judge Leavitt indicated there had not been pushback, but he is addressing it because by adding a reference to juvenile court proceedings in Rule 412 and Rule 615 of the Rules of Evidence, it leaves some ambiguity as to its application. Judge Leavitt stated that by referencing juvenile proceedings in one rule, and omitting it from another, gives the indication that it was intended to be omitted in the other. Judge Leavitt believes it needs to be clarified one way or the other.

Judge Dame agreed that it is confusing and believes any reference to “or juvenile delinquency proceedings” should be removed. Judge Dame expressed appreciation for Judge Leavitt’s suggested changes to Rule 101 and 1101 as he believes it clarifies the applicability to juvenile proceedings. Michelle Jeffs also expressed she liked the suggested changes and believes clarifying the language is beneficial.

Judge Jensen stated the proposed changes caused her to pause and go through the rules. Judge Jensen expressed concern that the language could indicate a juvenile court proceeding is now a criminal case.

Chris Yannelli stated he would like to see the amendments to Rule 101 as proposed because it references both civil and criminal proceedings. David Fureigh agrees and indicated he likes the proposed changes to Rule 101 but does not know that changing Rule 1101 is necessary because Rule 43 of the Rules of Juvenile Procedure says the same thing. Judge Leavitt indicated he wanted them to match so there is no question from both sides of the equation that this body would have the authority to make exception to the Rules of Evidence. Although it is repetitive, Judge Leavitt stated because they are two different set of rules, it would be beneficial for them to match. Judge Dame clarified that it also includes juvenile court proceedings unless otherwise set out in the Rules of Juvenile Procedure, so Judge Dame believes the amendment to Rule 1101 is appropriate as well.

William Russell expressed concern to the proposed amendments and spoke in opposition to amending Rule 101. Mr. Russell indicated he went through the Rules of Evidence and pulled out the rules he believes the proposed amendment would affect, which include the following rules: 104, all three subparts of 404, 410, 417, 609, 612, 616 and 617. Mr. Russell also outlined several juvenile procedure rules that could be impacted as well, including Rule 15, 29A, 37A, 40, 43, 45 and 46. Mr. Russell expressed opposition to a wholesale change by adoption of the proposed amendments to Rule 101 and would prefer the committee be given direction to determine which of those rules should be juvenile court rules.

Mr. Russell indicated there are multiple policy issues, specifically to Rule 616 and 617. The amendment to Rule 101 would also be a very large change to subsections (a), (b), and (c) of Rule 404 on the practice in juvenile court. Mr. Russell stated he has long been disturbed by binary treatment of civil versus criminal in the Rules of Evidence because he believes juvenile court is neither one. Mr. Russell expressed the proposed amendment to Rule 101 starts in the right place, but as to policy decisions of the rules he previously outlined, Mr. Russell noted it should be up to the juvenile rules committee to determine what is admissible and what is not in juvenile court. Mr. Russell opposed a straight change to Rule 101 that when it states criminal, it means juvenile, and when it states defendant, it means minor accused in delinquency. Mr. Russell requests further study on the issue.

Mr. Russell stated his strongest objection is on Rule 404(c) of the Rules of Evidence, which deals with prior sexual misconduct being admissible in a criminal case. Mr. Russell believes if the proposed amendments to Rule 101 goes through, it will open the flood gates to use that evidence in a juvenile proceeding. Judge Leavitt indicated this discussion is important and outlines that if someone wanted to introduce 404(c) evidence in a juvenile court proceeding, there would likely be a discussion about policy and other things. In the end, unless it specified whether it was applicable to a juvenile court proceeding, the court could say there is no reason not to allow it.

Judge Leavitt indicated his first preference would be to amend only Rule 1101 and have the Rules of Juvenile Procedure committee make the policy decisions as to which Rules of Evidence apply in juvenile proceedings. Judge Leavitt needs assurance from the Rules of Juvenile Procedure committee that they will do it and if they are not willing to, the Rules of Evidence committee will do it. Judge Leavitt stated there are bigger issues than it looks like on the surface so if the Rules of Evidence committee removes any reference to juvenile court proceedings in Rule 412 and 615, and amend Rule 1101, he would like the juvenile rules committee to tackle the issue.

Judge Leavitt further stated Rule 506 of the Rules of Evidence is undergoing some revision to include some procedural ways in which a victim's mental health record would get before the court. This change may also implicate juvenile court proceedings. It may also affect some other privilege related rules that come up most often in a criminal context.

The committee had further discussion regarding Rule 412 and 615 of the Rules of Evidence and Rule 43 of the Rules of Juvenile Procedure. Chris Yannelli indicated he received a comment from another attorney regarding the language of "criminal case" versus "criminal proceeding" and the inconsistency throughout the Rules of Evidence. Judge Leavitt indicated he would discuss it with the committee.

The committee requested additional time to look closer at the issues. Judge Leavitt will join the committee at the next meeting on December 2, 2022, for further discussion.

3. Discussion & Action – Rule 6. Admission to detention without court order: (All)

David Fureigh reminded the committee that at the last meeting, the committee determined they should seek input from law enforcement about the change and requirement to sign a sworn statement when taking a youth into custody. The issue was continued over to this meeting, but it appears the committee is still seeking some input from law enforcement. There has been a request to continue this issue for the next meeting to get input from law enforcement. Mr. Fureigh also indicated the Supreme Court justices will also be pleased the committee is seeking input from law enforcement, so Mr. Fureigh can share their input with the Supreme Court.

Chris Yannelli stated he has passed the information to all law enforcement in the 4th district, and also sent the information to the 3rd district to seek input. Michelle Jeffs stated she had also taken the issue to law enforcement agencies in the 2nd district and they requested an opportunity to take it to the police association across the state. Ms. Jeffs indicated they are deeply interested in the issue and asked if they could have a representative come to the next meeting to address the issue. No objection is received to continue this agenda item to the next meeting.

4. Discussion & Action – URCP 4 and URJP 18: (All)

David Fureigh stated he brought this issue to the committee's attention and wanted the committee to have a discussion about whether Rule 18 of the Rules of Juvenile Procedure should reflect a similar bilingual notice as outlined in Rule 4 of the Rules of Civil Procedure. The committee had previously discussed that a form would need to be created specifically for child welfare matters. Mr. Fureigh stated the forms committee is in support of developing the form. Mr. Fureigh inquired whether the committee wanted to amend Rule 18 to make that requirement. If so, the committee needs to determine when and how that form is developed.

Raymundo Gallardo indicated the response he received from the forms committee was they were more than willing to draft a specific bilingual notice. A staff member on the forms committee would meet with members of the committee to create a bilingual notice and once it is drafted, they could take the form to the forms committee on our behalf and present that to them for approval.

Judge Dame is in favor of amending Rule 18 to reflect the requirement of a bilingual notice and believes it would be helpful. William Russell, Sophia Moore and Jordan Putnam are also in agreement to amend Rule 18.

The committee then had a discussion regarding whether a bilingual form was necessary for a delinquency summons, or just for child welfare and termination proceedings. Ms. Moore would like to see the delinquency summons that the court

sends out. Cade Stubbs or Mikelle Ostler will distribute a copy of a delinquency summons and Mr. Fureigh will distribute a sample of a summons on a child welfare proceeding.

Judge Dame and Sophia Moore agreed to work on a proposed amendment to Rule 18 to include the bilingual notice requirement to bring to the next meeting.

5. Discussion & Action - Proposed 2023 Meeting Schedule: (All)

David Fureigh indicated the committee meetings have generally been held on the 1st Friday of every month, except for July. Mr. Fureigh stated it was brought up in a previous meeting about the possibility of holding one meeting per year in person and recommends that meeting be held during the warmer months for those that travel.

Janette White proposed the in-person meeting be held in May or June. The committee selected the in-person meeting will take place on May 5, 2023. William Russell inquired if there would be a virtual option for those who are not able to attend in person. Mr. Fureigh stated it should be sufficient notice to make a virtual option.

The July 7, 2023 date will be removed from the proposed 2023 meeting schedule.

The committee is agreeable to the proposed meeting schedule.

6. Old business/new business: (All)

William Russell stated he has had multiple people ask him to consider bringing a proposal to the committee to create a rule involving procedures on restitution in delinquency matters. Mr. Russell indicated there seems to be a process the legislature has given without any details for what it means and stated he intends to formulate the proposal in the next few weeks to start a dialogue on the issue.

Judge Dame stated he has several rules that he will prepare to discuss in more detail at later meetings as well.

David Fureigh inquired if Carol Verdoia had any legislative updates that may affect the committee. Ms. Verdoia stated there is one child welfare bill pending and one bill that will go through interim committees about a state ICWA law. If anyone is interested in that information, Ms. Verdoia has an e-mail about the dates/times where that will be discussed and can distribute the information to the committee members.

Janette White inquired if anyone has proposed a bill to stop the collection of child support while children are in custody. Ms. Verdoia stated there was some discussion regarding that issue last year, but she does not recall specifics. Ms.

Verdoia indicated there was concern about the money supporting placements that DCFS pays for, but stated it is an interesting issue and she can pass it along.

The meeting adjourned at 1:15 PM. The next meeting will be held on December 2, 2022 at 12:00 PM via Webex.