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

Meeting Minutes

David W. Fureigh, Chair

Location: Webex Meeting

Date: February 3, 2023

Time: 12:00 p.m. – 2:00 p.m.

Attendees: David Fureigh, Chair Judge Paul Dame Judge Debra Jensen William Russell Janette White Arek Butler Jordan Putnam Matthew Johnson Mikelle Ostler Michelle Jeffs Carol Verdoia, Emeritus Member Kristin Fadel	**Excused Members**: Sophia Moore Chris Yannelli **Guests:** Judge Steven Beck
Staff: Raymundo Gallardo Kiley Tilby, Recording Secretary Carolyn Sharp, Juvenile Court Law Clerk Joseph Rivera De La Vega, Juvenile Court Law Clerk	

1. **Welcome and approval of the January 6, 2023 Meeting Minutes:** (David Fureigh)

   David Fureigh welcomed everyone to the meeting and welcomed Judge Beck as a guest regarding the first agenda item. Mr. Fureigh announced that Joseph Rivera De La Vega is a new law clerk and will be assisting in research or other needs for the committee. Mr. Fureigh then asked for approval of the January 6, 2023, meeting minutes. Judge Dame outlined several changes and provided some clarification to the minutes. With those amendments, Judge Dame moved to approve the minutes. Janette White seconded the motion, and it passed unanimously.

2. **Discussion & Action – Rule 6. Admission to detention without court order:** (Judge Steven Beck; All)

   Mr. Fureigh indicated Judge Beck and Judge Dame worked together on some proposed amendments to the rule which were included in Tab 2 of the packet. The subsections clearly outline what is to be included in each section and provide some examples of the requirements. Mr. Fureigh reminded the committee that Blake Murdoch was going to work with JJYS directly if the rule is approved by this committee and the Supreme Court on making sure a state-wide form is created to adhere to the amendments that are made by this committee. Mr. Fureigh then turned to Judge Dame, Judge Beck, and the committee for further discussion on the proposed language.

   Judge Beck stated this most recent attempt at the proposed amendment to Rule 6 is to take into account the suggestions from the committee to include all four subsections that are required in the statute. Judge Beck indicated the reason he included examples in the subsections was based on the discussion at the last committee meeting to avoid any confusion as to what information is specifically being asked of law enforcement to provide. Judge Beck believes the current form that law enforcement is using solicits the information outlined in subsection (1), (2) and (4), but wanted to specifically outline subsection (3), the reason why the minor was not released, as that information is not currently being provided. Judge Beck stated he included a separate suggestion for subsection (4) which is asking an officer to list the basis for admission under the administrative rule. While that is best practice, Judge Beck does not know that law enforcement is aware of the rule, so a suggestion was made to list the name of the offense and the level of the offense.

   Judge Dame expressed appreciation in being able to work with Judge Beck on this. Judge Dame indicated the word "example" was used, but Judge Dame expressed that he did not consider the parentheticals in the proposed rule to be examples, but rather is stating "in other words" or "this is what we need." Judge Dame stated he understands the position on (b)(4) where it outlines to state the name and level

of offense, but he would prefer it to state the basis for admission under the administrative rule. Judge Dame expressed that the reason for this is because there are several bases for admission of detention other than leveled charges under a portion of that rule. For example, admission to detention could also be for immigration, runaway from out of state, warrants, etc. These are other reasons why a minor may be detained that the proposed language now does not cover. Judge Dame understands officers may not know the administrative rule, but they could get help from the detention staff when filling out the form if they typically rely on detention staff anyway.

William Russell stated he likes a combination of those two and suggested that under i.e., it could include the name and level of offense, or another basis as outlined under the administrative rule. Mr. Russell indicated that Judge Beck is right in that half of practitioners do not know what the administrative rule says and also understands that law enforcement may not particularly need to know what it says, but believes a citation to the rule is helpful. Mr. Russell suggests a combination of the two to make the language even tighter than it is.

Judge Dame stated another argument for using the language regarding the basis for admission under Administrative Rule 547-13 is that is what subsection (b)(4) says and is also based on the statute. Judge Dame believes the form should therefore have a section for eligibility of a minor under the detention guidelines, which is the basis for admission under 547-13. Mr. Russell indicates he does not hate the citation to the specific rule but does not know that it means anything for the signatory below of the form. Jude Dame is hopeful that with this change and the training that he is optimistically thinking the county attorneys within the state will conduct with law enforcement, they will know what it means.

Mr. Fureigh indicated he is not familiar with the rule, and inquired if the rule lists out the levels. Judge Dame responded that the administrative rule is a very detailed rule that lists all the different bases for admission to detention, and it splits it up between the different ages of a minor (under 12 years old and over 12 years old) based on level and name of offense. The administrative rule also outlines other bases for admission to detention that have nothing to do with the level of charges or even charges at all, including DCFS cases, JJS cases, warrants, pick up orders, runaways from out of state, immigration cases, etc., that are separate from the offense that would be a crime if committed by an adult.

Mr. Fureigh then inquired if the detention facilities have a list or a copy of the rule when officers bring minors to detention. Mr. Russell stated he has personal knowledge of this and indicated the Salt Lake detention center has a back entrance called intake for law enforcement to drop youth off if they believe they have a bookable offense. Not only does detention staff have a copy of the existing rule, but they also have some articulation from their trainers and managers as to what it means. They also go through detention release alternatives and that analysis as well, which gets into the other subsection about why alternatives were not considered. The detention center has rules and articulations from management about how to apply the rule.

Judge Dame stated he is brainstorming a combination and proposed leaving the language about the name and level of offense the minor is alleged to have committed, but also include language regarding any other basis for admission to detention under Utah Administrative Code R547-13. Mr. Russell and Judge Beck agreed that was the best way to go about it. Mr. Russell further states if law enforcement does bring a youth into a detention center for something that is not eligible for detention, the detention staff can specifically reference that rule to law enforcement.

The committee then had some discussion about how to appropriately cite the administrative rule within the statute and referred to the style-guide. The committee agreed it should be worded in a way that the average person would understand. The committee also discussed whether it should be "i.e" or "e.g," and made minors changes to the rule regarding "must" versus "shall" and "bringing" versus "presenting." Mr. Gallardo made the changes to the proposed rule with the approval of the committee based on the discussion.

Mr. Fureigh requested that Blake Murdoch work with JJYS to develop the form to include the "i.e." language as outlined in the proposed rule. Mr. Gallardo stated he will take the feedback to him so he can reach out to the Deputy Director of JJYS to develop the form.

Mr. Fureigh brought up the e-mail that Chris Yannelli sent to the committee that he had heard back from law enforcement in Salt Lake City that indicated they felt picked on by the proposed change and asked the committee for feedback on that issue. Mr. Fureigh expressed that he understood where they were coming from but does not believe this committee is proposing something substantially different than what is already required. Judge Beck stated the reason he turned to the language in the statute is so he was not proposing something that is not already required in the statute. Judge Beck indicated all the proposed rule is doing is soliciting the information from law enforcement that the statute requires. While Judge Beck is sympathetic to law enforcement, the proposal is not requiring them to do something else.

Michelle Jeffs stated she believes this proposal is far less problematic in her mind as it is close to the statutory language. Ms. Jeffs also expressed that she appreciates the examples and "i.e." language because it specifically lays out the four factors and what specific information is being requested of law enforcement to provide. Although the bias language was a concern that law enforcement expressed when she was soliciting feedback, Ms. Jeffs believes the proposed rule mirrors the statutory language which she believes is appropriate.

Mr. Fureigh requested a motion from the committee to adopt the proposed rule as amended today. Mr. Russell moves to adopt the proposed rule, Matthew Johnson seconded the motion, and it passed unanimously.

Judge Beck stated he already had an immense amount of gratitude to this committee, but that gratitude has only grown and appreciates the committees thoughtful consideration of his petition. The committee expressed appreciation to Judge Beck for all the work done on this issue.

3. **Discussion & Action – Rule 22. Initial appearance and preliminary examination in cases under Utah Code section 80-6-503:** (All)

Mr. Fureigh stated this committee had approved an amendment to Rule 22 to submit to the Supreme Court for final publication in the rules. However, a few days prior to his meeting with the Supreme Court, Mr. Gallardo received information regarding a joint resolution that was in the works in the legislature that would have effect on Rule 22 that, if passed, may require this committee to amend Rule 22 again. Mr. Fureigh outlined that he, Mr. Gallardo, and Mr. Johnson discussed the matter and decided not to submit the proposed amendment to Rule 22 for final publication. Mr. Fureigh outlined that Mr. Gallardo attached the proposed legislation and the joint resolution to the materials that were distributed to the committee. In reviewing it, Mr. Fureigh believes the big change would be adding "reliable hearsay." Mr. Fureigh inquired if the committee wanted to move forward with the request to publish, or if they wanted to wait and see what happens with the legislation. Mr. Fureigh stated his thought would be to wait and see what happens with the legislation, and requested input from Carol Verdoia for any insight or information she can provide.

Ms. Verdoia stated she does not have a lot more information than Mr. Fureigh has, but indicated she has seen a letter opposing it which was sent to the legislatures and the committee with a page long list of prosecutors and other offices who are expressing their concerns about a variety of provisions. Ms. Verdoia outlined it is fair to say there is a movement to oppose it and it just depends on whether it gets amended.

Arek Butler stated his inbox gets something every day from prosecuting groups and advocates expressing a lot of opposition. Mr. Butler inquired if this committee would want to consider making changes regardless of the bill to include the reliable hearsay language.

Mr. Fureigh proposed three suggestions to the committee: the committee could submit the proposed amendment in Rule 22 as-is, the committee could wait and see what happens with the legislation and then submit it, or the committee could make some further amendments to Rule 22 and then submit it. Ms. Verdoia stated that in terms of timeline of rules, by the time the legislation finishes and governor

signs it, it would be past the point of being able to get it in this cycle, so this committee will have all late spring and summer to work on any changes that the legislation brought, unless it is an emergency.

Mr. Russell stated that based on Ms. Verdoia last comment, that is how he thinks the committee should proceed. Mr. Russell indicated he is aware of the letter that Ms. Verdoia referenced, which articulated arguments from a bunch of prosecutors state-wide as to why they have problems with the proposed legislation. Mr. Russell stated he too is getting multiple e-mails from his defender e-mail lists and both sides are actively and passionately engaging their representatives in this process. However, the bottom line is no one can predict what it will look like in the end, which may be radically different from both the rule and proposed legislation right now. Mr. Russell stated once it goes into committee, things could change again drastically. Mr. Russell does not believe this is an emergency rule and thinks this committee should hold off on making any decisions until after the legislative session. Mr. Butler and Ms. Jeffs agrees.

4. **Discussion – Rules of Evidence and Rules of Juvenile Procedure:** (All)

Mr. Fureigh outlined that this committee identified three rules that may implicate juvenile practice with Judge Leavitt's proposal to change the Rules of Evidence, including Rule 404, Rule 609, and Rule 616. Mr. Fureigh stated there are a couple of things to consider while going through these. One is the current practice in juvenile courts and whether it should be applied in juvenile court procedures (including child welfare, delinquency, and other proceedings) and if this committee determines it should not apply in juvenile proceedings, to come up with a rule indicating such.

The committee started with the discussion on Rule 404 dealing with character evidence. Judge Dame indicated the way the committee had discussed proceeding with this previously, is that if a member of the committee feels like a rule of evidence should not be applied to juvenile proceedings, they would bring that forward to the committee. Judge Dame stated he knows Mr. Russell has concerns with the applicability of Rule 404(c) so requested to hear from Mr. Russell first.

Mr. Russell first inquired if anyone on the committee was aware if Judge Leavitt's proposal had been approved. Nobody on the committee was aware, so Mr. Russell believes this committee may have time to deliberate on this. Mr. Russell further stated that a lot of these are not procedural and are substantive. Rule 404(c) was a substantive rule of policy that belonged to the legislature, but the Supreme Court disagreed with his perspective when they adopted Rule 404(c) several years ago. Mr. Russell indicated he does not have an issue with 404(b) and believes it should be available to apply in juvenile court fully for both applicability in child welfare, if there is any application there, but also in delinquency cases. Mr. Russell stated it seems like that rule makes sense because it starts off by saying that evidence of

propensity generally is not admissible. The rule then states that in cases where they are trying to show lack of intent, opportunity, motive, etc., then in these specific areas only is it admissible. Mr. Russell outlined that he has always treated it like it has applied and believes it should apply.

However, Mr. Russell stated he opposes the applicability of Rule 404(c) and outlined that he supplied a lot of literature on brain development, impulsive nature of young people whose prefrontal cortex are still being formed, that the minor may be acting out perpetrations that have been committed against them, etc. Mr. Russell is adamant in his position that Rule 404(c) should not have application in juvenile court. Mr. Russell admittedly has not considered if it has an application in child welfare, and would defer to someone with more experience in child welfare to determine whether it should. However, if the definition that is being used is to show that a juvenile has a predisposition to perpetrate sexually, Mr. Russell would object to its application in child welfare based on the same basis. Mr. Russell stated he would be happy to put together a proposed rule that would exclude that from the juvenile rules.

Judge Dame clarified Mr. Russell's position and stated that Mr. Russell did not think Rule 404(c) should apply based on this concept of developing adolescent brains and that a minor perpetrating on a child under the age of 14 can be done for multiple reasons that would not lend itself to an inference of propensity which is different than the analysis with someone who is 18 years or older who does that. Mr. Russell agreed that is the summary of his viewpoint and believes there are completely different considerations in a prior perpetration by a developing adolescent as compared to those of an adult with a prior sexual misconduct allegation.

Judge Dame stated he would like to take some time to think about Mr. Russell's perspective. However, in preparing for the committee meeting today, Judge Dame stated he has thought about whether Rule 404(c) should be applicable in juvenile proceedings. Judge Dame outlined that an argument could be made that even under the 404(c) analysis, it is still subject to Rule 402 relevance and Rule 403 the weighing of the evidence. The concerns that Mr. Russell has raised could be addressed in each instance in which 404(c) propensity evidence has been requested to be used against a juvenile as it would go to the weight of the evidence as opposed to admissibility. Judge Dame expressed that his is a unique situation, and he is not going to advocate that it should not be used but he wanted to give it some further thought. Judge Dame stated the evidence would still be subject to the balancing test of relevancy and weight of the evidence.

Judge Dame outlined that the most recent case law that deals with Rule 404(c) talks about some of the dangers of that type of evidence, specifically in the details about those prior acts against children under the age of 14. However, those concerns are mitigated in a bench trial as opposed to in front of a jury. In a bench trial, the judge would have the ability to consider the issues Mr. Russell has raised, understand that they are dealing with an adolescent brain, and then can analyze whether it

does show propensity because of the details of the prior act of this juvenile. Judge Dame again points out it would still be subject to the weight and relevancy.

Janette White inquired how often Judge Dame has seen evidence like this being asked to be submitted. Judge Dame responded that he does not recall it ever coming up as an issue. Mr. Fureigh indicated he had the same thought as Judge Dame in that these are bench trials so the case will be in front of a judge that likely had these youth previously so they are already aware of the history and prior cases.

Mr. Johnson stated that if you look at the advisory committee notes on line 60, it outlines what needs to be done regarding the process, before the evidence is admitted. It further goes into other factors the court needs to look at before admitting this type of evidence and discusses the case from 1998 and other applicable determinations. Mr. Johnson believes there are already a lot of safeguards and provisions that the judge has to look at before the evidence is admitted under 404(b) or 404(c).

Ms. Jeffs indicated she has never argued these factors in juvenile court case, but has argued them in the district court and it was difficult to get it in. Ms. Jeffs stated she had intended to use it in a juvenile court case but the case ended up getting resolved. In the juvenile case, the victim had prior similar acts that occurred in a different county involving a similar fact pattern (a 16-year-old who was touching young girls on a playground). For something like that, she intended to argue that it should be admissible under 404(c), but also recognizes she could have potentially used 404(b) to get it in as well. Ms. Jeffs then inquired if Mr. Russell's intent was to get rid of the ability to use prior allegations or prior convictions of child sexual abuse entirely, or only under Rule 404(c). Judge Dame expressed that he believes Mr. Russell's concern is limited only to 404(c), and that he does not have a problem with the application to Rule 404(b).

Mr. Russell agreed with Judge Dame's analysis of his position, and stated this committee has raised some good arguments on both sides. However, his concern with 404(c) is the evidence comes in for unabashed, unmasked propensity evidence. The purpose of the evidence is to try and prove that if you did it once, you will do it again. Mr. Russell expressed that while there are built-in protections, it is still unabashed propensity evidence for one specific type of crime regarding sexual perpetration. Mr. Russell does not have an issue with 404(b) as it limits the amount of specific types of proofs or elements that it is allowed in on, such as knowledge, plan, identity or absence of mistake. Mr. Russell outlined that his issue with Rule 404(c) is it goes one step too far on naked propensity as to children. Mr. Russell indicated he has never seen this in any prior defense in the last three decades in juvenile court because every time a prosecutor has brought it up since 404(c) was approved, his argument is that the language says, "in a criminal case in which the defendant is accused" and argues that it cannot apply because there is no defendant and no criminal case. Judge Leavitt is now proposing that 404(c) should apply to juvenile delinquency prosecution which has brought this discussion forward.

Judge Dame stated that several of the committee members mentioned the *Shickles* factors. As an interesting side note, Judge Mortensen from a concurring opinion in 2019, talks about the *Shickles* mandate dying a death of a thousand cuts and references the fact that advisory notes say to look at those factors, but further states he would hope trial courts would ignore that misdirection. Judge Dame suggests the committee may want to look at the Mortensen concurring opinion as he does not believe *Shickles* is mandated under the current case law as it once was perceived to be. Judge Dame outlined the citation for the case is *State v. Frederick*, 450 P.3 1154, and points out paragraph 53 of Judge Mortensen's concurring opinion for an interesting discussion on *Shickles*.

Ms. White suggested that if the committee cannot agree on this issue, then perhaps there was a procedure that could be developed about how the juvenile court will handle this type of evidence. Mr. Russell stated Rule 404(b) has a specific notice requirement that the prosecutor provide a notice to the defense. However, in 404(c), it states that it can be brought up during trial. Ms. White agrees that is a different distinction and believes 404(c) evidence should have to be considered before trial. Mr. Fureigh stated this committee would have to amend or add a rule outlining what would have to be done in juvenile court proceedings before being allowed to admit that type of evidence. Mr. Fureigh indicated he cannot imagine what good cause would be for a prosecutor to introduce the evidence at trial without any prior notice. With that being said, Mr. Fureigh pointed out that these are bench trials, and the trier of fact is the one that is deciding that issue either way, even if it comes up during trial. Mr. Fureigh stated that the court could listen to the argument and determine if there was good cause and if it should be admissible anyway.

Mr. Russell expressed appreciation to the committee members for the robust commentary and great ideas. Mr. Russell stated he is willing to hold onto this for further discussion until he has something meatier to propose for the committee to consider. Mr. Fureigh stated he received an e-mail with questions about the proposed changes to the Rules of Evidence about what this committee was going to do about it, if the committee was aware of it, etc. Mr. Fureigh stated the change has not been made yet so this may be one this committee should revisit if or when the rule is changed, determine what affect it has, and then this committee can decide what needs to be done at that point. Judge Dame agreed, and stated he would like to think about Mr. Russell's concerns more. Mr. Fureigh reminded the committee that any of the members can come forward and propose a change that would exclude 404(c), or otherwise change it in some way to make it more fair.

Mr. Butler inquired if anyone knew of any experts on child sexual abuse against minors where minors are acting out against other minors who would be willing to talk to the committee. Mr. Butler stated that while he has been to a million instructions and trainings where he learns about how juveniles think, he does not know that has heard that they cannot form propensity. Mr. Butler stated if he has a trial with a 16-year-old or 17-year-old who has had multiple incidents, he would like to know if that is because of the way they think or if they have formed certain

pathways in their mind that an adult would. Mr. Butler stated that, with all due respect, he does not know that just because a child's brains is not fully formed, that they cannot form propensity and would like to be instructed on that issue. Judge Dame responded and stated he thinks that is something parties can raise through an expert at trial. Judge Dame cannot imagine there is just one point of view of the experts on that perspective and it would be subject to the balancing test.

The committee agreed to table these issues for a future date.

The committee then discussed Rule 609. Mr. Russell stated he has resolved, at least in his mind, Rule 609 and does not believe it is an issue in juvenile court. Mr. Russell stated he believes everyone can agree they want impeachment for a witness who has been convicted or adjudicated on one of the impeachable convictions listed. After re-reading the provision on the juvenile adjudication in subsection (d) it appears to not really be an issue that would harm the accused child because it outlines that it cannot be used against the accused. Mr. Russell stated that any objections he had to Rule 609 have been resolved through re-reading because it makes sense to him that the Supreme Court has determined that if someone has been convicted of these sorts of things, affects their credibility and that is fair game. Mr. Russell stated he is fine with that being fair game as to witnesses in both adult court and juvenile court prosecutions so any objection he may have had is resolved.

Mr. Fureigh inquired how the committee feels about Rule 616. Judge Dame stated Chris Yannelli brought that up at the last committee meeting and suggested the committee hold off on that discussion until Mr. Yannelli can join them at the next meeting. Rule 616 will be added to the agenda for the next meeting. Mr. Fureigh stated that his thought is that, with regard to the applicability of the Rules of Evidence in juvenile procedures, if anything comes up, the committee members can raise it and get it on the agenda. Otherwise, the issue will not be carried over for the next agenda, with the exception of Rule 616, to allow Mr. Yannelli an opportunity to be heard.

5. **Discussion & Action – Rule 29C. Victim restitution orders:** (All)

Mr. Fureigh stated he would like to wait on this issue until Mr. Russell has a better connection, and Mr. Yannelli can be present. Mr. Fureigh suggested the committee put this on the agenda for the next meeting. Mr. Russell agrees, and stated there is proposed legislation to redo the restitution law, so he would like to table it.

6. **Discussion – The Judicial Council's Green Phase Working Group Report:** (All)

Mr. Fureigh stated the committee members were each assigned a specific rule to review to determine if changes need to be made to comply with the suggestions outlined in the Green Phase Working Group Report.

Judge Dame stated he had Rule 7 and 9 and he did not see any amendments that needed to be made. Judge Dame expressed that he was concerned he was missing something, but does not see a need for an amendment. Judge Dame indicated he spoke to someone he knows that is on the Green Phase Working Group and the individual did not remember the discussion in detail enough regarding what the specific concern was.

Ms. White inquired if the committee thinks definitions should be added. In the Green Phase Report, it talks about virtual hearings and hybrid hearings and wondered if this committee should define what the different types of hearings mean. Ms. White stated in Rule 18, it talks about notice or service and there are pretty specific things that are suggested in the Green Phase Report that are helpful, so she did not know if there needed to be specific definitions incorporated so they do not have to be spelled out in each rule. Mr. Fureigh stated if it is going to be used in different rules, his suggestion would be that this committee create a definition section unless it is just applicable to one rule.

Mr. Butler stated Rule 29B was fairly recently amended in 2021 which deals with remote hearings and the ability of the court to do hearings with remote conferencing. Mr. Butler was in the same predicament as Judge Dame in that he was not sure what the Green Phase Working Group wanted the committee to look at because it already lays out all the different ways the court can have remote conferencing and allows each court flexibility in doing so.

Mr. Putnam stated the Green Phase Report does not specifically state that definitions need to be made, but it may be important to determine how to define some of these things. Mr. Putnam pointed out that throughout the rules, it uses the term "remote conferencing," but in the Green Phase Report, it uses the term "virtual." Mr. Putnam wondered if the committee needed to change the wording through the rules. Mr. Putnam also discussed in Rule 34, he changed "in-person" to "personally" in subsection (f). However, Rule 37B was more complex because he was trying to tailor the language to reflect a post-COVID virtual court hearing world. Judge Dame and Mr. Putnam then had a discussion on why he chose to use the word "personally." Ms. White suggested that instead of using the word "personally," that it could be broken down to state "in person, virtually, or hybrid" so it is clear there are different options to appear.

Mr. Fureigh stated that in Second District, the court has adopted language calling it either an in-person hearing or a virtual hearing. Ms. Fadel suggested that there needs to be something that identifies that in-person means physically present in the courtroom. Ms. White agreed that definitions would be helpful. Ms. Ostler then inquired if the committee considers appearance via phone virtual or remote. Mr. Putnam responded that be believes virtual means remote, whether that be via Webex or by phone. Ms. Fadel again stated the committee should consider a definition that states that.

Mr. Fureigh stated there was a comment made earlier with regard to the change of the terms "remote conferencing." Mr. Fureigh stated when the rule was

amended, he was on the committee and that was the term that was being used at the time because it could be telephone or video. However, this was all pre-COVID so virtual hearings have a completely different meaning now than it meant back then.

Judge Dame stated he understands why "personally" was used, as it was not meant to limit it to being in the courtroom only. Ms. Fadel stated it is still not clear what personally means versus in-person. Mr. Putnam responded that personally means they are presenting themselves before the court in whatever method the court determines to be appropriate. Judge Dame clarified that this is as opposed to appearing by counsel, they are appearing themselves. Ms. Fadel does not see the distinction, and Ms. White agreed it could be confusing to pro se litigants or someone who does not appear in juvenile court often.

Mr. Butler stated that to avoid confusion, it might be smart to state the individual will appear personally, whether in person or virtually. However, the committee needs to make a decision regarding the language "remote conference" because there is reference to that in other rules as well. Mr. Butler stated the Green Phase Report did not use the term remote conferencing. Mr. Butler thinks it would be smart to put in definitions that virtual hearings could encompass several different things. Mr. Johnson agreed that the committee needs to define virtual, and suggests that they abstain from using more specific terms like "Webex" and leave it more generic due to the changing technology.

Ms. White indicated she is willing to try to come up with some definitions for the next committee meeting. Judge Dame suggested it would also be helpful for practitioners to coordinate the definitions with other committees so they are consistent. Mr. Fureigh asked Mr. Gallardo if he could contact the other committees to see how they were defining the terms. Mr. Gallardo will reach out to the civil and criminal committees. Mr. Gallardo does not know if they are tackling this issue yet, but he will let them know this committee's intent to collaborate the definitions and terms used so it is uniform throughout.

7. **Old business/new business:** (All)

No old or new business was discussed.

The meeting adjourned at 2:00 PM. The next meeting will be held on March 3, 2023 at 12:00 PM via Webex.