



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

### Meeting Minutes

*David W. Fureigh, Chair*

Location: Webex Meeting

Date: June 2, 2023

Time: 12:00 p.m. – 2:00 p.m.

<p><b><u>Attendees:</u></b> David Fureigh, Chair Judge Paul Dame William Russell Janette White Mikelle Ostler Sophia Moore Michelle Jeffs Arek Butler Jordan Putnam Matthew Johnson Carol Verdoia, Emeritus Member</p>	<p><b><u>Excused Members:</u></b> Chris Yannelli Kristin Fadel Judge Debra Jensen Thomas Luchs Jim Smith</p>
	<p><b><u>Guests:</u></b> Eric Weeks, Office of Legislative Research and General Counsel</p>
<p><b><u>Staff:</u></b> Raymundo Gallardo Kiley Tilby, Recording Secretary Carolyn Sharp, Juvenile Court Law Clerk Joseph Rivera De La Vega, Juvenile Court Law Clerk</p>	

**1. Welcome and approval of the May 4, 2023 Meeting Minutes: (David Fureigh)**

Mr. Fureigh welcomed everyone to the meeting and thanked those who were able to attend in-person at the last meeting. Mr. Fureigh indicated this will be his last meeting and there are still openings for committee members. Mr. Fureigh stated the opening has been advertised a few times and they have only received two applications and they were both from the AG's Office. Mr. Fureigh stated the committee needs prosecutors, clerks, and Guardians ad Litem. Mr. Fureigh asked the committee members to reach out to their associates and co-workers and try to recruit more members.

Mr. Fureigh then asked the committee for approval of the May 4, 2023, meeting minutes. Judge Dame stated he had a small correction to the minutes on page two that he believes was a typo. The change was made. With the amendment, Janette White moved to approve the minutes. Sophia Moore seconded the motion, and it passed unanimously.

**2. Discussion & Action – Rule 27A. Admissibility of statement given by a child:  
(All)**

Mr. Fureigh reminded the committee that Rule 27A was amended to include language that if the requirements outlined in the statute were not complied with, the statement would be inadmissible. Mr. Fureigh stated he took the proposed amendment to the Supreme Court, and they had some concerns that he asked the committee to discuss further. Specifically, the Supreme Court asked this committee to discuss if Rule 27A was a blanket exclusionary rule, and suggested this issue should be on a case-by-case basis and on the examination of case law rather than a blanket rule. Mr. Fureigh indicated the Supreme Court did not say anything about it being substantive rather than procedural but that he got the sense they were questioning that. Mr. Fureigh stated his only concern is that where the statute sets the requirements for custodial interrogation, whether it is a procedural issue for the rule to determine what the result would be for failing to comply with the requirements in the statute. Mr. Fureigh suggested the committee may want to consider changing the language to “may be inadmissible” to still allow the court discretion and review it on a case-by-case.

Mr. Johnson stated one of the justices had an issue with subsection (c) because if the statute was not followed, any confession or interview with the juvenile would be deemed inadmissible. Mr. Johnson indicated one of the biggest points he was trying to make was it should not be determinative and should be reviewed on a case-by-case basis. Mr. Johnson agrees the committee may want to consider changing the language to make it more abstract and not so concrete.

Judge Dame stated he is leaning towards leaving it out altogether based on the Supreme Court's input and their concerns. Judge Dame indicated if you look at Rule 616 of the Rules of Evidence dealing with statements made during custodial interrogations, there is a provision that indicates evidence of a statement made by the defendant during custodial interrogation shall not be admitted in a felony

criminal prosecution unless a recording is made. Judge Dame indicated this committee is not dealing with that same issue because the statute does not require a recording. However, as he looks at that, and considering the Supreme Court's concerns, Rule 616 has a detailed exception to not being admissible. For example, it is limited to felonies, there is an exception for interviews out of state, an exception for statements for impeachment purposes only, an exception for spontaneous statements, etc. There are several issues this committee has not really fleshed out. Judge Dame stated that having said all of that, considering the Supreme Court's concerns, he is leaning towards leaving it out rather than changing the language to "may be inadmissible" because he does not think that helps.

Mr. Gallardo stated that while the committee is thinking about Judge Dame's thoughts, there was another suggestion by the Supreme Court in subsection (b). Right now, the language says the state "shall retain the burden," and the justices did not think there was anything to retain as the state has the burden. Mr. Gallardo also indicated Mr. Yannelli could not be present at the committee meeting and apologized, but that Mr. Yannelli provided Mr. Gallardo with his suggestions and concerns. Mr. Yannelli's proposal would be to leave Rule 27A with paragraph (a) only and remove paragraph (b) and (c). Mr. Yannelli also expressed concern that with the proposed changes to the language in the Rules of Evidence, that Rule 616 may now apply in juvenile court matters, and he thinks it should be excluded to the application of juvenile court matters because they have Rule 27A.

Mr. Butler stated he agrees with Judge Dame to leave out the proposed language in (c) altogether. Mr. Butler stated there are a lot of exceptions and things that may apply in that situation, and he does not think this committee needs to flesh those out. Mr. Butler indicated that by removing (c), it gives the court leeway to decide to either exclude it or not, so leaving it out would be the best.

Mr. Johnson stated he agrees with Mr. Yannelli's proposal to just have subsection (a) to be Rule 27A. Mr. Johnson indicated that allows law enforcement to see the citation to the statute and lets them know they need to comply with the provisions in that statute. Ms. Moore inquired if the preponderance language is in the statute and wants to make sure that language is somewhere before this committee removes it. Judge Dame does not think it is in the statute. Ms. Jeffs stated she likes the language in (b) because she has been the new prosecutor who wonders if it was one of those weird times when the burden shifts and believes that language is helpful for those situations. Mr. Fureigh agreed with what has been said. Mr. Fureigh stated one concern he had was if this committee removes (b), without it being in the statute, if everyone will wonder why it was taken out and may question if the state bears the burden.

Mr. Johnson stated that if the preponderance language is not in the statute, and this committee decided to keep (b), this committee may need to take out the preponderance language. The committee then discussed where the preponderance language came from. Judge Dame stated that if this committee is going to change that language, he would like some additional time to research the issue as that

language has been in the rule and does not believe it has ever been an issue. Mr. Gallardo reviewed the history of the amended changes to Rule 27A and indicated the preponderance language has been there since 2007. Mr. Gallardo suggested that before the committee makes any change, he could send every amendment to this rule since 2007. Mr. Gallardo stated he cannot see any reasoning for including that language but could at least share the amendments. Mr. Gallardo indicated it appears that language has been in the rule since the beginning. Judge Dame proposed to leave it as-is, and if a committee member wants to research the issue, they can bring it up later if needed. Several committee members agreed as well.

Mr. Fureigh stated the Supreme Court justices only suggested the change to (b) to change "shall retain" to "has" if this committee was already making changes to Rule 27A. If no changes are proposed by this committee, Mr. Fureigh thinks the committee can just leave it. Mr. Fureigh stated that if someone wanted to do some additional research and find out where the preponderance language came from, then they could, and this issue could be put back on the agenda to be changed.

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

Mr. Fureigh reminded the committee that there were some additional changes made to Rule 22 at the last meeting pursuant to the Supreme Court's suggestions and concerns. Mr. Fureigh stated they were getting ready to take it back to the Supreme Court but right before that, Mr. Gallardo brought up the possibility to amend (f) to coincide with statute citation in (j). Mr. Fureigh, Mr. Johnson, and Mr. Gallardo all discussed it and thought that issue should be brought back to the committee first before taking it to the Supreme Court.

Mr. Gallardo stated at the last committee meeting, the committee amended (j), but upon further review noticed at the beginning of line 29 in (f), it contains the same sentence that refers to Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-504. Mr. Gallardo indicated he wanted to make sure this committee was okay with adding subpart (3) to that statute reference as well. The committee agreed it should also be added to (f), and the change was made. Judge Dame moved to approve Rule 22 with that amendment, William Russell seconded the motion, and it passed unanimously.

**4. Discussion & Action - Rule 10. Bail for non-resident minors: (Judge Dame, Arek Butler, All)**

Mr. Fureigh stated Judge Dame brought up Rule 10 because it was brought to his attention by another judge that the rule may be outdated. Judge Dame and Mr. Butler were going to look at the rule and the statute and decide if the citation was correct or needed to be changed. Judge Dame stated he had a suggestion to change the language from what it is to Utah Code Title 77, Chapter 20, Parts 4 and 5 but

wanted someone else to have their eyes on it and make sure they agreed with that. Mr. Butler indicated he recently started his new position and has not had time to review it and apologized. Mr. Butler inquired if this committee could look at it together.

Mr. Fureigh stated that in looking at the current citation cited in Rule 10, it will at least get someone close to where they need to be. Mr. Fureigh stated he is fine to wait until the next committee meeting in August to allow Mr. Butler some additional time to look at it. Judge Dame stated he would feel more comfortable with someone else looking at it. Mr. Russell stated his concern is that chapter 20b no longer exists and he needs some additional time to look into it and requested it be placed on the agenda for August.

Mr. Weeks introduced himself and stated he is an attorney with the Office of Legislative Research and General Counsel and has recently been assigned to the judiciary committee. Mr. Weeks offered to get Mr. Butler in contact with the drafting attorney so he could have a conversation with them and what they were thinking. Mr. Butler stated that would be helpful.

#### **5. Discussion & Action - H.B. 60: Juvenile Justice Modifications: (All)**

Mr. Fureigh stated there were some changes made by H.B. 60 that may require some changes to be made to the citations in Rules 17 and Rule 56. Mr. Gallardo stated this was brought to his attention by his supervisor as they were trying to work on what petitions for expungements look like come October 1, 2023, when the changes are effective. Mr. Gallardo indicated H.B. 60 enacts several statutes and because expungements are mentioned in Rule 17 and Rule 56, his supervisor was wondering if there needed to be changes made. Mr. Gallardo asked the committee members if they would be willing to look at H.B. 60 and look at Rule 17 and 56 to see if they needed to be updated or if further changes needed to be made to the rules themselves. Judge Dame brought up that subsection (a)(2) of Rule 17 may also need to be updated because there were some legislative changes that amend that as well.

Judge Dame stated he believes they need to be changed and updated and made some suggested changes. Judge Dame started with Rule 17(a)(2) which references section 80-6-304. Judge Dame proposed that instead of 80-6-304, it would be changed to 80-6-303.5, 80-6-304.5, and 80-6-305. Judge Dame further proposed that in subpart (c)(2) where it says 80-6-1004, it should be 80-6-1004.1, and in subpart (c)(3) where it says 80-6-1005, it should now be 80-6-1004.2. Judge Dame stated it may be helpful to have someone else look at it to confirm those are accurate citations.

Judge Dame then proposed changes to Rule 56. Judge Dame proposed in Rule 56(b)(2) where it says 80-6-1004, that be changed to 80-6-1004.1. Judge Dame further proposed that under (c) where it says 80-6-1005, it should now be 80-6-1004.2. Judge Dame then indicated that at some point there needs to be new subpart (d) and (e) to cover 1004.3 and 1004.4, and change the current subpart (d)

to (f). Mr. Russell inquired if this committee could combine 1004.3 and 1004.4 into one subsection as both of those discuss expunging a juvenile record. Mr. Russell stated he does not know if the processes are identical, but if they were, this committee may consider combining them into one subsection. Mr. Russell indicated that there used to only be a procedure to expunge adjudications. With these changes, Mr. Russell points out there is now a mechanism to expunge both arrests that do not result in prosecutions and acquittals, which is what 1004.3 and 1004.4 are addressed. Mr. Russell stated he does not think there needs to be a rule for automatic expungements because that is an internal process of the juvenile court.

Judge Dame stated he believes it would be clearer to set them out in four different sections, but he does not feel strongly about that. After looking at the text, Mr. Russell agreed. Judge Dame indicated that the process in 1004.3 seems similar to the process under 1004.1, but he does not believe this is a quick draft that this committee could do right now on the fly. Mr. Russell stated his preference would be that since the changes are not effective until October, this committee asks staff to do a preliminary draft so the committee can review and compare it and put it back on the agenda in August. Several committee members agreed. Mr. Gallardo will work on getting a hold of the law clerks to come up with a draft to address the new subsections.

Mr. Fureigh stated he looked at the style guide on how to list statutes back-to-back based on the changes that were made in Rule 17, and the style guide does not say anything. Mr. Butler stated the Blue Book would have you put a dash, but he does not know if that is how the style guide suggests. The committee looked at how the citations have been referred to in the past in other rules and determined to leave them written out.

## **6. Discussion – Rule 52. Appeals: (All)**

Mr. Fureigh stated this has been on the agenda in the past, but he cannot remember where it came from. Mr. Gallardo stated this was brought to his attention by another juvenile court administrator as there was new legislation recently regarding the appointment of defense counsel for the types of hearings outlined in Rule 52. Mr. Gallardo stated that as the juvenile court administrator was looking at that particular legislation, it mentioned the appointment of counsel for parents in termination and restoration of parental rights. Mr. Gallardo indicated the administrator then cross-referenced Rule 52 and saw that Rule 52 does not mention restoration of parental rights. Mr. Gallardo presented this issue to the committee and inquired if they would like to add language in subsection (b) to add “and restoration of parental rights.”

Mr. Fureigh stated his recollection of the reason for section (b) is to expedite the appeals process by cutting it down from 30 days to 15. Mr. Fureigh indicated if you look at (a) it includes everything that (b) or (c) does not include so restoration of parental rights in appeals would have to be filed within 30 days unless this committee decided to put it in (b). Mr. Fureigh stated the reason those proceedings

were included in the past was because the committee felt like those were things that needed to be expedited, which he agrees with. Mr. Fureigh then proposed to the committee whether appeals from restoration of parental need to be expedited along with those other proceedings outlined.

Ms. Moore stated she would like to set this issue over because she knows they have amended some of the appellate rules and some of the deadlines were changed because they were not getting transcripts in time. Ms. Moore does not recall how it was changed, but she would like time to check into that issue. Judge Dame stated the statute that addresses these issues, Utah Code 78A-6-359(2)(a), includes that restoration of parental rights appeal need to be filed within 15 days. Mr. Gallardo stated in the e-mail he received, it cites that statute as well, and it was proposed that the rule mirrors that statute.

Ms. Verdoia reiterated what Judge Dame said and stated this committee does not have a choice. Ms. Verdoia stated the restoration of parental rights would need to be expedited because it involves a child in limbo if the child has not been adopted. Ms. Verdoia indicated the child is also able to petition for restoration of parental rights. Ms. Verdoia stated there is not a choice that needs to be made anyway, but there was a policy reason behind the change. Ms. Verdoia does not believe the addition was connected to the appointment of counsel. The issue was then brought up that Rule 1(f) of the Utah Rules of Appellate Procedure does not include restoration of parental rights. Ms. Verdoia explained that when the original expedited child welfare rules were put in place to pull out separate types of appeal they wanted to go on an expedited way, restoration wasn't in the statute yet. Ms. Verdoia does not think the appellate rules committee has had a chance to address it, or it has not been brought to their attention.

Mr. Fureigh stated the way the rule is written, it may not need to be changed because it would still apply under (a) that says, "except as otherwise provided by law," though it would make it more clear by adding it in. Ms. Verdoia stated she does not want to confuse practitioners or the public who do not regularly practice in juvenile court. Judge Dame agreed.

The committee then discussed a stylistic change to (d), and whether it should state "will" or "must." Judge Dame proposed that we remove the word altogether, and the committee agreed. Due to the committee no longer having a quorum as some members had to leave early, this will be added to the agenda for August for a vote.

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

Mr. Fureigh asked the committee if there was anything else the committee would like to discuss. Ms. White thanked Mr. Fureigh for all he has done for this committee. Mr. Gallardo also thanked Ms. Ostler for her work, and all the other members who will be leaving the committee after this meeting. Mr. Gallardo stated they will be meeting with the forms committee on June 12, 2023, to work on the bilingual notice form. Mr. Fureigh then reminded everyone there is not a committee meeting in July.

The meeting adjourned at 1:20 PM. The next meeting will be held on August 4, 2023 at 12:00 PM via Webex.