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

Meeting Minutes

Matthew Johnson, Chair

Location: Webex Meeting

Date: October 6, 2023

Time: 12:00 p.m. – 2:00 p.m.

Attendees:	**Excused Members**:
Matthew Johnson, Chair William Russell Elizabeth Ferrin Adrianna Davis Dawn Hautamaki Thomas Luchs Judge Paul Dame Jordan Putnam Janette White Michelle Jeffs Arek Butler James Smith Sophia Moore Judge Debra Jensen David Fureigh, Emeritus Member Carol Verdoia, Emeritus Member	**Guests:**
Staff: Randi Von Bose, Juvenile Law Clerk Raymundo Gallardo Kiley Tilby, Recording Secretary	

1. **Welcome and approval of the September 1, 2023 Meeting Minutes:** (Matthew Johnson)

   Mr. Johnson welcomed everyone to the meeting. Mr. Johnson asked for the committee for approval of the September 1, 2023, meeting minutes. Judge Jensen moved to approve the minutes. Ms. White seconded the motion, and it passed unanimously.

2. **Discussion & Action: Rule 56. Expungement:** (All)

   Mr. Johnson stated Mr. Gallardo brought this to him the other day and indicated there are two statutes that address the service of the expungement order, which are 80-6-1002 and 80-6-1006.1. Mr. Johnson wanted the committee to look at that and discuss if there need to be further amendments to Rule 56.

   Judge Dame suggested deleting subpart (g) and leaving it to the statute. Judge Dame stated it is going to have to be a legislative fix if they are wanting to make that rule understandable and not contradictory. While the committee is doing that, Judge Dame proposed redoing subpart (b). Judge Dame stated basically we have a certain structure with different types of expungements, and they all have a structure which basically just refers to the relevant statute. Judge Dame thinks he would do the same thing in subpart (b) and just refer people to the appropriate statute and mirror the language in the other subparts to make it more understandable and easier to follow. Mr. Johnson requests clarification on the proposal. Ms. Ferrin stated she agrees with Judge Dame's proposal as it would make it consistent across the rule, which would be nice.

   Mr. Russell stated he landed the same place as Judge Dame did in his observations that the statute is very clear on the duties to serve under the different types of expungements. Mr. Russell indicated the statute speaks for itself, and he does not believe this committee needs to parrot the language in the statute or even refer to it. Mr. Russell thinks Judge Dame's proposal is ideal. Mr. Russell also agrees subpart (b) needs to be cleaned up and made uniform in respect to the other subsections, but he does not know if this committee should use the word solely on the adjudication expungement. Mr. Russell indicated some of the juvenile records consist of adjudication and non-judicial adjustments, but you have to file a petition for expungement under the adjudication of the expungement clause even if there is just one adjudication there.

   The committee discussed changing subpart (b) to state, "A person whose juvenile record includes an adjudication, as provided for in Utah Code section 80-6-701, may

petition the court for expungement as provided for in Utah Code section 80-6-1004.1." Subpart (1) and (2) were deleted from subparagraph (b).

Ms. Hautamaki stated she is looking for clarification regarding line 13 where it says the court may waive the hearing as provided. When you go to the statute, it does talk about what is required and it has the "and" with the prosecutor agreeing to a wavier, but Ms. Hautamaki inquired whether it is expected the court will see a document filed. Ms. Hautamaki stated the statute says upon the filing of the petition, the court will schedule a hearing and send them notice but then it is "unless it's waived." Ms. Hautamaki is wondering if this committee needs to put something in there regarding what that looks like. Mr. Gallardo stated this committee is thinking about deleting that language altogether, including that language this committee added before about waiving the hearing.

Judge Dame believes Ms. Hautamaki is wondering if this committee wants to add some procedural guidance. Ms. Hautamaki responded that this issue was discussed in a Clerk of Court meeting a few weeks ago and there was a lot of confusion as to what that looks like and if they have to file or if the court can waive on its own. Judge Dame stated one option is to leave it up to the individual judges on how they want to address that. Judge Dame indicated if it were him, he certainly wouldn't just do it on his own and would address it at an initial hearing and see if it needs to be waived. Ms. Hautamaki stated the question was whether the court had to hold a hearing to discover a waiver, or if they had to have a waiver filed in writing. Judge Dame stated he thinks it could go either way. Judge Dame indicated if he got a Motion to Waive and everything is complied with and everyone has had an opportunity to be heard, then the Court can decide whether to waive it without having a hearing. If he did not have that, then he would set it for a hearing and address the waiver at that time.

Mr. Russell stated he is looking at the statute now since Ms. Hautamaki brought up this issue. Under Utah Code 80-6-1004.1(4)(g) as Judge Dame pointed out after the notification to the victim, under (d) it says juvenile court may waive the hearing for a petition if there is no victim, or if there is a victim, the victim would have to agree to the waiver. Mr. Russell indicated there would need to be some sort of evidence of that in the form of a filed written waiver or some representation from the prosecution, and the prosecuting attorney would have to agree to the wavier. Mr. Russell agrees with Judge Dame if there is no evidence of the waiver or there is no victim, then the Court has to hold a hearing. Judge Dame agreed. Ms. Moore thinks that is accurate.

Mr. Gallardo clarified that this committee is not including any of that language anymore in the proposed rule. Judge Dame indicated he believes it is addressed adequately in the statute, so it doesn't need to be laid out specifically in the rule.

Ms. Hautamaki stated the statute no longer requires the court to provide certified copies for free, yet that language is still outlined in the rule. Ms. Hautamaki indicated the court used to provide those copies for free because they delivered them to the agencies but now the court is doing that. Ms. Hautamaki inquired whether that still

needs to be included in the rule. Ms. Moore proposed citing to the statute, Utah Code 80-6-1007. Judge Dame doesn't think it would be helpful to refer to the statute necessarily because it's just prohibitions on charging fees under certain situations. Judge Dame proposes they take out the language "at no cost" and leave that to the AOC to recommend to the courts whether they can or should charge a fee since it is not specific in the statute right now.

Ms. Hautamaki inquired if subpart (g) could be removed altogether since it is no longer the petitioner's responsibility to provide that to the agencies because the court now does that. Mr. Johnson stated Utah Code section 80-6-1002 does require petitioners to serve expungement orders for vacatur and expungement orders. Judge Jensen stated Utah Code section 80-6-1006.1(3)(a) states, "If the juvenile court issues an expungement order, the juvenile court shall send a copy of the expungement order to any affect agency or official identified in the juvenile record." Judge Jensen indicated the juvenile court has the burden of doing that right now.

Judge Dame suggests leaving subpart (g) as is and take out "at no cost." Mr. Russell stated the language in the statute is a little bit confusing because it talks about how the court can't charge for the issuance of an order and he doesn't know what issuance means. Mr. Russell indicated the court can enter an order but what they are talking about here is the provision of certified copies to the petitioner and the statute doesn't address that. Because there are questionable terms in the statute that this committee can't change, expound upon or limit, Mr. Russell would suggest removing "at no cost" because that is clearly not in the statute anymore.

Judge Jensen would propose changing it to say the court clerk "may provide certified copies" instead of "will." Judge Jensen thinks it is now the juvenile courts' duty to provide it to the agencies. Although they can still provide to the petitioner, it is a "may" and not a "shall" or "will." Ms. Hautamaki agrees. Mr. Russell believes the petitioner is entitled to a certified copy of their own expungement. Mr. Russell does not like "may" in there because it makes it sound like it's discretionary with the clerk and the question is what they need to charge. Mr. Russell stated he always advises Petitioners to keep an original certified copy of their expungement because 10 years in the future there may be something come up that they need to show an expungement. Mr. Russell thinks the court needs to provide one clean certified copy and they may have to pay for it, but "may provide" is a little too fuzzy.

Ms. Hautamaki indicated the records access rule would already cover the ability for them to have access to the expungement order. There were also changes so that the record can be unsealed to provide a copy of the expungement to the petitioner in an automatic expungement. Ms. Hautamaki thinks there are other avenues that cover that. Ms. Hautamaki proposes that if this committee is going to say, "the court will provide" rather than "may," that it be limited to one certified copy or whatever number this group feels is appropriate. Ms. Hautamaki indicated some have expressed it is excessive.

Judge Dame inquired if there was an issue with the committee just deleting subparagraph (g) in its entirety. Judge Dame stated if it is already covered under the records access rule, it may not be necessary. Judge Dame indicated that the rule says petitioner may deliver a copy of the expungement order to all officials affected by the expungement order, but that is just saying they can do something they can already do. Ms. Hautamaki stated the rule is Rule 4-202.03(2) of the Code of Judicial Administration which already addresses that and does not require a motion to unseal. Judge Dame does not think there is a use for subpart (g), and Ms. Hautamaki agreed. Judge Jensen indicated with that statute in place, she agrees we don't need the language in (g). Subparagraph (g) was removed.

Mr. Johnson asked if there was a motion from the committee to send it to the Supreme Court for public comment. Ms. Hautamaki motions, Ms. White seconded, and it passed unanimously.

3. Discussion & Action – Rule 31. Initiation of truancy proceedings: (All)

Mr. Johnston stated the next item up for business in Rule 31 with regard to truancy. Mr. Johnston indicated that at the last meeting, the main discussion was whether this committee should repeal Rule 31. However, Rule 2 and Rule 57 also make mention of truancy proceedings. Mr. Johnson asked the committee to discuss whether they want to leave them or repeal them.

Judge Jensen stated the Second District Juvenile Court judges recently had a meeting with some legislators. One of the legislators specifically addressed truancy and it is an issue they are going to be addressing at the upcoming legislative session. Judge Jensen would vote to hold off and see what happens this legislative session before we address the truancy issues within the rules. Ms. Jeffs agreed.

Mr. Russell stated during the last meeting, he called Rule 31 a zombie rule and he sticks to that. Mr. Russell had also heard that the legislature is going to address it, but this committee doesn't know how that process will turn out. Mr. Russell suspects there will be a revival of court involved truancy petitions, but he has some trepidation about a zombie rule just hanging out there. Mr. Russell believes everyone would agree, including the Board of Juvenile Judges, that the juvenile court does not have jurisdiction over truancy petitions as it stands. Mr. Russell does not have heartburn about leaving it for now and harkens back to Ms. Verdoia's point that once a rule is gone, it is difficult to revive it again. Mr. Russell joins in the request for the committee to table this until a later date until the legislature acts.

Ms. Hautamaki stated she worries about having conflicting information out there and worries that the rule says one thing and the statute says something else. Ms.

Hautamaki wanted to note her concern, but she does understand why the committee would want to wait to determine the outcome of the legislative session.

Mr. Gallardo stated he had a conversation with the appellate court administrator, and he asked him if there was any history or mechanism to suspend a rule. The appellate court administrator was not aware of any, but he suggested having a conversation with our justices to see if there could be an announcement to the bar and see what the justices think about a suspension. Judge Dame doesn't think there is any authority to suspend a rule and is concerned if there was an attorney from another state, they wouldn't be able to identify that it was suspended. Judge Dame thinks the committee should just leave it for now, but he doesn't feel strongly about that. Mr. Russell is also concerned about approaching the justices about it.

The committee will table this issue until after the legislative session for further discussion.

4. **Discussion – Rule 52. Appeals:** (All)

Mr. Johnson stated at a recent Supreme Court Conference, the Court suggested a few minor changes. Mr. Johnson indicated Judge Dame had also proposed a complete restructure of the rule and asked the committee to further discuss these issues. Mr. Gallardo pulled up the proposed amendments to Rule 52 and provided an explanation to the committee for the reasoning behind the proposed changes from the Supreme Court. Judge Dame indicated his proposed amendments may eliminate the need for some of the proposed changes by the justices. Judge Dame believes his proposed restructuring makes it clearer.

Ms. Verdoia stated she agrees with Judge Dame that "as otherwise provided by law" is unhelpful because it makes it seem like a practitioner has to do extensive research to figure it out. Ms. Verdoia stated this rule really has to do with the appellate court jurisdiction and the rules of appellate procedure that overlap. Ms. Verdoia stated if anything changes in case law or the appellate rules before this committee gets notice of it and changes it, practitioners will see this and think it's the end of the story in terms of time frames. Ms. Verdoia is worried it puts a higher burden on lawyers because appeal deadlines are jurisdictional. It's not like you can come back later and say they missed the deadline and ask for another chance because they won't, and it is very black and white. Ms. Verdoia thinks it's dangerous for practitioners in this area to think that this rule contains everything they need to know.

Judge Dame inquired if this committee should just refer to Utah Rules of Appellate Procedure. Judge Dame thinks it is dangerous to have a rule that can be superseded by a rule of appellate procedure change if they set out the timeframes. Judge Dame thinks if there are two rules saying the same thing, his preference would be to go to the ultimate source, which would be the Utah Rules of Appellate Procedure. Ms.

Verdoia believes the deadlines should still be included in this rule, and Mr. Butler agreed. Judge Dame indicated that practitioners are likely going to rely on this rule and are not going to do extensive research, so he is concerned this committee will have to have an emergency meeting to quickly change the rule if there are changes to the Utah Rules of Appellate Procedure.

Judge Dame inquired if the Rules of Criminal Procedure or Rules of Civil Procedure have timelines for appeals outlined in their rules. Ms. Verdoia stated the Utah Rules of Appellate Procedure outlines for every other case besides child welfare, the deadline has always been 30 days. When private practitioners are familiar with other procedures and the appeal process and deadline of those, the thought was to provide some immediate notice to a practitioner that there is a shorter time frame, and they need to be aware of it.

Mr. Russell asked where the 15-day versus 30-day deadlines came from. Ms. Verdoia stated the 15-day deadline was because many years ago several stake holders in the system stated the timeframes for child welfare appeals were too long and they needed to do something to expedite them. After a long time of consideration about the process, the appeal deadline was changed. Ms. Verdoia indicated that because practitioners has to file notice in the juvenile court, it makes some sense to have overlapping rules about that here. Mr. Gallardo stated the 15 days comes from statute. Ms. Verdoia agreed, and stated it was then added to the appellate rules and juvenile rules. Ms. Verdoia also pointed out there is a possibility that the deadline in statute could go away because it is procedural, so then it would just be the appellate and juvenile rules that outline the deadline.

Mr. Russell stated he thinks Mr. Butler's suggestion about leading off with "unless otherwise provided in the Utah Rules of Appellate Procedure" is his preference on that first lead-in by persuasive arguments from other persons here. Judge Dame likes that suggestion. Mr. Gallardo inquired if the committee wants to work on the proposed restructuring by Judge Dame, or if they want to go back to the original. Ms. Verdoia stated she likes the proposed restructuring because the proposed changes from the justices were trying to do the same thing that Judge Dame has proposed.

The committee discussed a few changes to the restructuring and made several changes. Mr. Johnson asked for a motion to send the new proposed Rule 52 to the Supreme Court for public comment. Ms. White made the motion, Mr. Russell seconded, and it passed unanimously. This proposed rule will be sent to the Supreme Court for public comment.

5. **Discussion – Rule 7. Warrants:** (Jordan Putnam; All)

Mr. Johnson stated Mr. Putnam will be leading the discussion in regard to warrants and the sealing of warrants. Mr. Putnam stated his intent is to have an open discussion and dialogue as their office recently became aware that they are not

getting access to warrants that have been filed in CARE. Mr. Putnam stated Rule 7, specifically the last subsection, indicated the warrant is sealed. The problem Mr. Putman is having is the warrant is supposed to remain sealed for 20 days, but even after that timeframe, they are still not given access. Mr. Putnam proposed whether there was anything this committee could to do allow access once the warrant has been fully executed.

Ms. Verdoia stated she doesn't know if this committee can amend the rule to say that because statute, Utah Code section 78A-6-102, is what gives the juvenile court authority to issue the warrants for the same purposes and in the same manner as described in Title 77, Utah Code of Criminal Procedure. Ms. Verdoia indicated that historically this committee put this language in the rule because Title 77 requires the 20-day sealing period. Ms. Verdoia suggested this committee look at that further and determine whether this committee actually has the authority to change the timeframe based on that.

Judge Dame stated this rule is consistent with the criminal rule. Ms. Hautamaki explained what the process looks like for the clerks. When a request for a warrant is submitted, the judge gets that and signs it. Once it is signed, that order will go into the CARE system. Once the court knows the youth has been picked up and there is a case to attach the warrant to, the clerks will attach that warrant to the case, but that document is sealed and will always remain sealed. Ms. Hautamaki stated the court's internal process is that clerks track that deadline and then upload a copy that is no longer sealed that the parties of the case can see.

Mr. Putnam stated this committee can table this and he can do some more research and bring it back to the committee, if needed.

6. **Discussion – Pretrial Hearings:** (Jordan Putnam; All)

Mr. Putnam stated this is kind of like the last item in that he wanted to have more of a discussion. Mr. Putnam stated he started off in Utah Code section 80-3-401, which deals with pretrial adjudication hearings and states that in abuse, neglect or dependency pretrial hearings must be scheduled within 15 days. Further, a pretrial hearing may be continued upon motion for good cause as described in Rule 54 of the Rules Juvenile Procedure. Mr. Putnam stated if you look at Rule 54(a), it states pre-trials can be continued once upon stipulation of the parties and then after the first continuance, it may only be continued with the approval of the court. Mr. Putnam then stated subpart (b) goes on to talk about the second continuance. Mr. Putnam expressed this was brought to his attention because he has started to get pushback on setting a second or third pre-trial.

Mr. Putnam then reviewed Rule 35(d) of the Utah Rules of Juvenile Procedure with the committee. Rule 35(d) states, "The court in its discretion or upon motion of a party may schedule further pre-trial hearings or conferences as may be necessary to

expedite adjudication or disposition, consider discovery issues, formulate or simplify trial issues or facilitate possible settlement negotiations." Mr. Putnam is worried this conflicts with Rule 54. Mr. Putnam's thought would be if that is going to be an issue going forward, perhaps this committee could change Rule 54 to say respondents are entitled to one continuance without being required to get stipulation from other parties.

Judge Dame inquired if there there was interpretation under 54(b) that it doesn't allow parties to make a motion and let the court decide. Judge Dame stated the rule says an additional continuance can be granted only with approval of the court – meaning that a party can submit a motion, even without stipulation of the parties, and allow the court to decide. Mr. Putnam stated that was his understanding, but there have been recent issues. Mr. Butler stated Judge Dame is correct. Mr. Butler indicated that is his interpretation as well that the parties can make a motion and allow the court to decide without stipulation of all parties. Ms. Moore stated it can be construed that stipulation is required.

Judge Dame indicated he does not know the situation here, but the court could have been making the ruling pursuant to Rule 54(c). Mr. Putnam stated he will chew on it and is not proposing any changes at this point but wanted to bring it up to the rules committee. Mr. Putnam expressed appreciation for the comments.

7. **Discussion – Pretrial Justification Hearing:** (All)

Mr. Gallardo stated this issue was brought to him by the assistant juvenile court administrator and Randi Von Bose, who is the new juvenile court law clerk. This issue was brought to her by one of their judges. This judge had a request for a pre-trial justification hearing which is a hearing related to the use of force and CARE was recently programmed to schedule these types of hearings. They wanted the committee to look at this to see if Rule 12 of the Utah Rules of Criminal Procedure applies to the juvenile court.

Ms. Von Bose stated she had a request from a juvenile court judge regarding the justified use of force, which was passed by the legislature in 2021 and deals with the constitutional right to self-defense. Utah Code section 76-2-309(3)(a) specifically cites Rule 12 of the Utah Rules of Criminal Procedure. Ms. Von Bose stated the conflict she is running into is this Rule 12. Ms. Von Bose stated we can only incorporate Utah Rules of Criminal Procedure if it is specifically mentioned in the Rules of Juvenile Procedure. As far as she can tell, we don't have that incorporated for the justification hearing at this point. The question is how this committee wants to handle that if it needs to be specifically incorporated in. Another issue the judge had was whether it becomes a pretrial hearing or it's a trial in and of itself. Ms. Von Bose stated right now, Rule 19 of Utah Rules of Juvenile Procedure gives no more than 7 days to make a motion which is where previous law clerks have gone with it. However, that's in conflict with what they are seeing on the criminal procedure motion where it says 28

days for the justification hearings. Ms. Von Bose stated there needs to be some discussion about where this fits in and how they incorporate what rule.

Judge Dame stated the time limits are different. Under Rule 12, it is 28 days before trial, not before the hearing. However, Rule 19 states 7 days before the hearing so that's a significant difference. Mr. Russell stated they have been doing a few of these types of hearings in 3rd District and the judges are setting hearings on them. Because the statute does envision a pretrial determination, and based upon ruling the charge can be dismissed or continued on to trial, Mr. Russell didn't perceive there was a pressing need to have a rule on it. However, Mr. Russell is equally certain there is a best practice to have a rule on it. Mr. Russell stated Rule 19C governs rules in delinquency cases which is where that would fall into. Mr. Russell indicated the current Rule 19C does have suppression practice in juvenile court which is borrowed from Rule 12. Rule 19C also has section 402 of the criminal code process within the rule. Mr. Russell stated it makes sense that there should be some provisions in Rule 19C that recognize some sort of process by which the pretrial justification hearings can be heard. Mr. Russell doesn't have a problem using the time limit outlined in criminal rule 12(c)(3) well in advance of trial because by that time the defense attorney should know a month before trial whether they have justification or not. Mr. Russell believes the prosecutor should have notice if there is a justification hearing well in advance of trial and thinks this committee should take criminal rule 12(c)(3) and add that verbatim to Rule 19C under subsection (d).

Judge Dame thinks that is a good suggestion and thinks its appropriate to keep it consistent with the Criminal Rules of Procedure to the extent it makes sense to do so.

Mr. Gallardo and Ms. Von Bose will put a proposed redline version together, and work with Mr. Russell on it to be placed on the agenda for November.

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

Mr. Gallardo stated the Utah Rules of Appellate Procedure were amending Rule 52 of their rules. Mr. Gallardo indicated they met yesterday, and he doesn't have an update as far as where their rule is. Ms. Verdoia stated she received an update after their meeting because they were seeking input from Ms. Verdoia and their other appellate attorney. Ms. Verdoia stated they moved it to the next meeting to continue discussion on November 2nd at noon. Ms. Verdoia stated that the committee was still debating how to set the deadline for a motion to reinstate an appeal. Their concern is that 45 days isn't long enough for a parent who does not realize the problem until after that deadline has passed. Mr. Gallardo stated if anyone is interested, let him know and they can join that discussion.

Mr. Gallardo stated the Supreme Court announced that they will be issuing a memo soon regarding the roles of each committees' members, specifically Emeritus members and non-voting members. Mr. Gallardo stated there had apparently been

some non-voting members voting on issues, but Mr. Gallardo is confident it was not this committee.

Mr. Johnson expressed gratitude to this committee.

The meeting adjourned at 1:53 PM. The next meeting will be held on November 3, 2023 at 12:00 PM via Webex.