



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

### Meeting Minutes

*Matthew Johnson, Chair*

Location: Webex Meeting

Date: December 1, 2023

Time: 12:00 p.m. – 2:00 p.m.

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

**1. Welcome and approval of the November 3, 2023 Meeting Minutes:** (Matthew Johnson)

Mr. Johnson welcomed everyone to the meeting. Mr. Johnson asked the committee for approval of the November 3, 2023, meeting minutes. There was some discussion and clarification as to page four related to the changes to Rule 101 of the Utah Rules of Evidence. Several changes were made to clarify the discussion. Mr. Putnam moved to approve the minutes with the changes made. Ms. Moore seconded the motion, and it passed unanimously.

Mr. Johnson informed the committee that the other rules, aside from Rule 19C, that were brought to the Supreme Court were accepted and Rule 9 was published and made effective immediately. The other rules will be effective May 2024.

**2. Discussion & Action: Rule 19C. Delinquency, traffic and adult criminal matters:** (All)

Mr. Johnson informed the committee that the Supreme Court had questions regarding why traffic was included in the title of the rule as the body of the rule does not address traffic violation, and also suggested some additional changes. Mr. Johnson requested Ms. Von Bose share the history of the rule with the committee and the reasoning behind why traffic is outlined in the title.

Ms. Von Bose explained that the note on the 2018 publication says, "The 2017 amendment deleted (d) through (g) and (i) through (l), providing for motions, and made related and stylistic changes. For present provisions comparable to those deleted from this rule, see Rules 19A through 19C." Ms. Von Bose explained that prior to the addition of rule 19C, Rule 19(l) said, "In delinquency, traffic and criminal matters, motion practice shall be governed by the Utah Rules of Criminal Procedure." Ms. Von Bose believes it is appropriate to keep "Delinquency, Traffic and Adult Criminal Matters" in the rule title but to also add pleadings, motions, or motion practice to clarify. Ms. Von Bose proposed the title read, "Motion Practice for Delinquency, Traffic and Adult Criminal Matters."

Judge Dame stated that he believes the title of Rule 19C is appropriate how it is. Judge Dame indicated that the body of Rule 19C also does not address delinquency or criminal matters directly, but the purpose of Rule 19C is to differentiate motion practice for those proceedings as opposed to child welfare matters. Judge Dame stated the equivalent rule is Rule 12 of the Utah Rules of Criminal Procedure which is simply titled "Motions," but the Rules of Criminal Procedure do not have to specify what it applies to. Judge Dame believes someone in a traffic case should have the same protections and requirements as someone dealing with delinquency or criminal matters.

Mr. Russell joins in Judge Dame's position and agrees with his succinct analysis. Mr. Russell agrees that Rule 19C is stating that a lot of the traffic code are specific kinds of delinquencies, and the most notable that is litigated within the traffic code is the entire DUI family (e.g., metabolite, alcohol restricted minor, DUI, reckless driving, impaired driving, etc.). Mr. Russell stated these should have the same treatment as any other criminal violation that we call a delinquency in juvenile court. Mr. Russell stated there is no harm to leave traffic in there, and it helps practitioners and judges understand that it's another type of delinquency offense found in the traffic code, such as DUI or other related offense, that involves the same rights for delinquencies as youth as it would for criminal as adults. Mr. Russell is strongly in favor of leaving traffic in the title of Rule 19C, so practitioners know the rule also applies to DUI and other related offenses contained in the traffic code. Mr. Russell also noted delinquencies are scattered throughout 10 different titles of the code (e.g., education, controlled substances, weapons violations, alcohol offenses, etc.).

The committee then discussed the proposal to include "Motion Practice" in the title. The committee unanimously agreed it would be helpful to include it. Mr. Johnson stated he will take their feedback and comments back to the justices and let them know the reasoning behind why traffic is included.

Mr. Johnson stated the other proposal the Supreme Court had was regarding line 32 dealing with subsection (e). The justices proposed instead of using the language "in writing," to change it to state, "written motion." Mr. Gallardo stated it was his recollection that they initially proposed asking the committee to consider removing it completely because subsection (a) of Rule 19C already states it can be raised by written motion, and the justices were concerned it could be misleading because it is already outlined.

Judge Dame stated this committee took the language directly from Rule 12 of the Utah Rules of Criminal Procedure and Rule 12 says, "in writing," so the same problem exists in Rule 12 that they are wanting this committee to fix in Rule 19C. Judge Dame indicated it is also interesting to note that Rule 12 also says in subsection (a) "shall be in writing" and also says in subsection (c)(3) that a motion on the justification of the use of force shall be in writing.

Mr. Russell agrees with Judge Dame but stated subsection (a) of Rule 19C already addresses that. Mr. Russell suggested that subsection (e) be collapsed, that (e)(1) and (e)(2) be removed, and subsection (e) state, "Motions on the justification of the use of force pursuant to Utah Code section 76-2-309 must be filed at least 28 days before trial, unless there is good cause shown as to why the issue could not have been raised at least 28 days before trial."

Judge Dame stated the language in Rule 19C(a) is permissive language and states the issue may be raised by written motion. On the other hand, Rule 12(a) of the Utah Rules of Criminal Procedure uses the language "shall," so it is mandated. Rule 19C doesn't mandate that it be in writing and instead states it "may be raised prior to trial

by written motion.” Mr. Johnson indicated he reads that language to mean that counsel has an option to raise the issue and if they do decide to raise the issue, it has to be filed. Mr. Johnson does not believe it is permissive whether it needs to be written or not, but what is permissive is raising or not raising an issue before the court.

The committee then discussed the reading of subsection (a) and whether the language in subsection (a) should be changed to avoid conflicting interpretations. Ms. Moore expressed concern about this committee mandating all motions to be made in writing, when there are other motions that could be made verbally, except those that are specifically outlined in the rule that must be made in writing.

Mr. Russell stated he believes the language in subsection (e) that indicates it must be filed get us there because if a filing is required, it would have to be by written motion. Judge Dame again expressed concern about the permissive, not mandatory, language and wants to ensure it is mandatory for justification for use of force. Judge Dame stated he does not disagree with Mr. Russell that it is arguably redundant, but he would like to be consistent with Rule 12 of the Utah Rules of Criminal Procedure on this topic, to the extent this committee can be.

Mr. Gallardo inquired if this committee would like them to take both options back to the Supreme Court. Mr. Johnson asked the committee for input on whether both options should be taken to the Supreme Court, or if this committee wants to leave it as-is and explain why the committee came to that conclusion. Judge Dame stated he is okay taking both options to the Supreme Court for input, with an explanation as to why it may be helpful to leave it in. Judge Dame indicated he does not know if it is redundant to the point that it overrides clarification. Mr. Russell suggests taking both options to the Supreme Court for feedback, with an explanation that the language was taken from Rule 12 of the Utah Rules of Criminal Procedure and this committee had a robust discussion about whether the inclusion of “in writing” was redundant or not.

Mr. Gallardo stated a final suggestion the Supreme Court had was to use gender neutral language in line 34, so instead of stating “his or her” to state “minor.” Mr. Russell proposed using “their” instead, so it is not repeating minor in immediate succession. The committee agreed, and the change was made.

Mr. Johnson inquired if there was a motion from the committee to take the proposed changes and suggestions back to the Supreme Court. Mr. Russell made the motion to submit both options and to adopt the additional changes, both stylistic and other corrections, to the title and body. Ms. Ferrin seconded the motion, and it passed unanimously. Mr. Johnson and Mr. Gallardo stated their next meeting with the Supreme Court would be held on December 20, 2023.

### 3. Update on JJYS Booking Form: (Blake Murdoch; All)

Mr. Johnson stated this was not initially on the agenda, but Mr. Murdoch is present at this meeting to give an update on the progress of the booking sheet that JJYS has been working on.

Mr. Murdoch indicated this issue originated in this committee and he wanted to report back on the work JJYS has been doing regarding the booking sheet. Mr. Murdoch stated there were concerns reported that there was an inconsistency in the forms being used state-wide, and even within individual districts. Mr. Murdoch reported JJYS has been working on a web-based form which he believes will be tremendously helpful, particularly if changes need to be made in the future. Mr. Murdoch stated law enforcement agencies will have access to the form on the JJYS website. When the form is submitted, it will be e-mailed to the detention facility and the officer that is booking the youth. The body of the e-mail will contain the information, but there will also be a PDF version with that information attached which will become the booking sheet. Mr. Murdoch explained the form is broken down into sections that are required in the statute. Law enforcement agencies will be provided training about the form, and the form will link the qualifying offenses both to the website and the PDF form. Mr. Murdoch is hopeful this will provide the direction needed as recommended by this committee to assist in a more consistent form throughout the state.

Mr. Murdoch stated the plan is for implementation of the form to begin in January. However, they recognize it will take some time for law enforcement to be completely up to date on the use of the new form. Mr. Murdoch indicated there will be an implementation period in which other versions of the booking sheet will still be allowed or accepted. After that implementation period, which is anticipated to be in May or June of 2024, the detention facilities will no longer accept other versions of the form than the web-based version. The web-based version of the form will be available on site at the detention facilities as well, so if law enforcement were to book a youth without the correct form, they will have access to it on site. Mr. Murdoch stated they will also make the Board of Juvenile Judges aware of this form so the judges can have it on their radar, and the form will be brought forward at the next Chiefs of Probation meeting.

Ms. Moore inquired if this form would be filed with the court. Mr. Murdoch stated it will, and it is anticipated it will be the booking sheet and also used for the probable cause determination. Mr. Murdoch stated there has also been discussion about the victim information being included on the form. Mr. Murdoch pointed out the narrative section where it reminds law enforcement agencies not to include identifying victim information so there is not a need for additional versions with redacted information to be filed.

Ms. Hautamaki inquired where the court would be able to find the victim's information in the event the judge found probable cause and the case involved a pre-trial protective order. Mr. Murdoch responded that there are continued discussions about that piece, and he will make sure that is addressed. Mr. Murdoch stated he does not have an answer about that right now, but he can report back to this committee when he has more information about that.

Mr. Russell stated the form looks great and his concerns have been addressed. Mr. Russell expressed appreciation for everyone's hard work on this project because it is very impressive. Mr. Russell inquired if at the bottom there will be a digital signature since it will be web-based. Mr. Murdoch stated it will be a digital signature, and there will be a box for them to type their name. Mr. Russell just wanted to ensure that it was made clear to law enforcement that it was their digital signature and aware of the "true and correct" statement.

Mr. Russell stated there have been several instances where judges, with good reason, read the narrative statement verbatim. Mr. Russell indicated at times, the narrative statement will include co-defendant information and confessions or statement that the co-defendant made. Mr. Russell stated this will lead to "snitch wars" in the detention facility because someone thinks someone else snitched on them and the co-defendants have gotten into issues. Mr. Russell suggested that they may want to consider removing any identifying co-defendant information, perhaps just the use of initials, to avoid accusations in the detention center. Mr. Murdoch agreed, and stated they may be able to expand that piece to suggest they do not include identifying co-defendant information.

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

No new or old business was discussed.

The meeting adjourned at 1:00 PM. The next meeting will be held on January 5, 2024 via Webex.