Utah Rules of Juvenile Procedure Committee- Meeting Minutes

December 1, 2017		Noon to 2:00 p.m.			Executive [Executive Dining Room		
MEETING DATE		TIME		LOCATION				
MEMBERS:	Present	Absent	Excused	MEMBERS:	Present	Absent	Excused	
Carol Verdoia				Mikelle Ostler				
Judge Elizabeth Lindsley				Alan Sevison				
Judge Mary Manley				Pam Vickrey				
Kristin Fadel				Chris Yannelli				
David Fureigh				Sophia Moore				
Brent Hall								
Debra Jensen								
Trish Cassell								
AOC STAFF:	Present	Excuse	d	GUESTS:	Presen	t Absen	t	
Katie Gregory								
Briana Allen	\boxtimes							
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AGENDA TOPIC								
I. Professional Disclos	ures and	Approv	val of	CHAIR: CAROL VER	DOIA			
Minutes								
Sophia Moore joined th	e commit	tee as	a new me	ember. Committee	members mad	e profe	ssional	
practice disclosures as						Profess	ional	
Practice. Carol Verdoia	a called fo	or appro	oval of the	e minutes of Octob	er 27, 2017.			
Motion: To approve	By: Ala	an Sevi	son	Second: M	ikelle Ostler			
the minutes of	Dy. 740	ari Sevi	3011	Second: 11	inche Osciel			
October 27, 2017 as								
written.								
A				1.,				
Approval	⊠ Una	nimous	; <u> </u>	Vote:	0			
				In Favor	Opposed _			
AGENDA TOPIC								
II. Continue Review o		mpacte	ed by H.B.	CHRIS YANNELLI				
239: Rule 9 and Rule	11							
Rule 9 Discussion:				1				
Chris Yannelli introduce	ed a revis	ed draf	ft of Rule	9 dated December	1, 2017. The	commit	tee	
discussed the rule's exclusion of "weekends and holidays" and whether this is constitutional under								
the Supreme Court's decision in <i>County of Riverside v. McLaughlin</i> , 500 U.S. 44, 111 S. Ct. 1661								
(1991). Although <i>McLaughlin</i> is an adult case, some states have applied it to juvenile								
proceedings through <i>In re Gault</i> . Pam Vickrey will make the HB 239 implementation committee								
aware of the <i>McLaughlin</i> case and its potential impact on HB 239 and the exclusionary language								
contained in section 78A-6-113(4)(a). The Committee members agreed to read <i>McLaughlin</i> and revisit the issue at the March 2, 2018 meeting.				IIII dila				
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Chris Yannelli reviewed the changes proposed at lines 26-35 pertaining to Juvenile Justice								

Services Detention Admission Guidelines. These reflect statutory changes that do not go into effect until July 1, 2018. The committee elected to hold the proposed changes at lines 26-35 until

the March 2, 2018 meeting to evaluate any further legislative changes.

Rule 11 Discussion:

Chris Yannelli reported that he reviewed Rule 11 and did not see the need for any changes based on H.B. 239. The committee considered the need to retain existing language regarding the use of "forms supplied by the clerk." Mikelle Ostler will check with the Clerks of Court to see if clerks are still using "forms supplied by the clerk" as stated on line 16 of the rule. She will report back and the committee will discuss the Rule 11 again at its March 2, 2018 meeting.

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Action Item:	Members should review the <i>McLaughlin</i> decision. Pam Vickrey will	
	discuss the case holding with the H.B. 239 Implementation	
	Committee. Rules 9 and 11 will be placed back on the agenda for	
	March 2, 2018.	

AGENDA TOPIC

III. Review of Rules 7A and 39	JUDGE LINDSLEY AND BRIANA ALLEN

Rule 39 Discussion:

The committee discussed concerns raised at the last meeting regarding the need to notarize documents in juvenile court because Section 78B-5-705 does not include the Rules of Juvenile Procedure in its exception allowing declarations in lieu of an affidavit. Katie Gregory has requested that an amendment to Section 78B-5-705 be included in the judiciary's "housekeeping" bill, but it may be too late to forward the proposal for the 2018 session.

Briana Allen summarized her research on the legislative history of Section 78B-5-705 and also explained that Section 78B-6-302 does not permit a statement of facts in lieu of affidavit to support a finding of contempt. The Utah Court of Appeals decided in *Iota, LLC v. Davco Mgmt. Co., LC* that the phrase "statement of facts by a judicial officer," in Section 78B-6-302 meant statements from any justice or judge of a court of record or any county court judge, but not anyone else. Therefore, it's not possible to use Section 78B-6-302 as a basis for a Rule 39 contempt declaration in Juvenile Court; the rule requires a notarized affidavit. Another option would be to remove the word "affidavit" from all of the juvenile rules. Katie Gregory or Briana Allen will report back to the committee in January on the potential for fixing the issue legislatively.

Rule 7A Discussion:

Judge Lindsley reviewed a November 28, 2017 draft of Rule 7A and proposed amending line 3 to strike "pick up order" and replace it with "warrant." She also proposed changing the title of the rule from "Pick up orders" to "Verbal warrants." She incorporated this in a motion which was seconded by David Fureigh. The committee discussed the need to retain the phrase "exigent circumstances" in the rule and whether it moderates "appears necessary for the protection of the community or the minor" or is a reference to when a judge is not available at the courthouse. Katie Gregory provided history regarding the creation of Rule 7A in 2007. In 2007, the committee created Rule 7A as a way to distinguish pickup orders from other warrants discussed in Rule 7. This was in response to concerns raised by the Juvenile Bench that a pick up order was distinguishable from a warrant. The Board's comments were shared with the URJP Committee and discussed with the Utah Supreme Court. After discussion, Judge Lindsley withdrew her motion and asked that the matter be placed on the agenda for the January 5, 2018 meeting. Katie Gregory will send Judge Lindsley a memo prepared by former juvenile court law clerk, Maile Verbica, containing research completed at the time Rule 7A was created in 2007. Judge Lindsley will summarize the research for the committee.

Action Item:	Judge Lindsley will summarize existing research for the committee.

AGENDA TOPIC

IV. Review of Rule 53-Appearance and withdrawal of counsel.

PAM VICKREY

A defense attorney contacted Pam Vickrey and asked her to discuss revisions to Rule 53 to make it easier for counsel to withdraw from a case. She read the attorney's email to the committee. He proposed an alternative path to withdrawal of counsel in both delinquency and child welfare cases rather than mailing a motion to the client and serving on all parties, wait for objections and prepare a notice to submit for decision. This must be then be followed by the filing of a Notice of Withdrawal. Members discussed whether practice should be different in delinquency cases versus child welfare cases and the differences between withdrawing and asking that the court vacate the appointment. Ultimately, the committee held Rule 53 for further discussion at its March 2, 2018 meeting. This will allow time for the Indigent Defense Commission to present its proposal on best practice standards to the Board of Juvenile Court Judges and others this winter.

Action Item:	Return Rule 53 to the March 2, 2018 agenda.

AGENDA TOPIC

V. Old/New Business

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The committee ran out of time to discuss the agenda item related to Rule 3. Katie Gregory reported that the comment period closed for Rules 14, 17, 34 and 48 and no comments were received. The comment period for Rules 7, 15, 16, 23A, 31 and 33 expires on December 31, 2017.