

# Utah Rules of Juvenile Procedure Committee- Meeting Minutes

March 1, 2019

Noon to 2:00 p.m.

Education Room

MEETING DATE

TIME

LOCATION

<b>MEMBERS:</b>	Present	Absent	Excused	<b>MEMBERS:</b>	Present	Absent	Excused
Carol Verdoia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Daniel Gubler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judge Elizabeth Lindsley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sophia Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judge Mary Manley (by phone)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mikelle Ostler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Arek Butler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Jordan Putnam	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trish Cassell (by phone)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Chris Yannelli	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Diaz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kristin Fadel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Fureigh	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>AOC STAFF:</b>	Present	Excused		<b>GUESTS:</b>	Present	Absent	
Katie Gregory	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Chairman Rupert Steele	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Jean Pierce	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Paul Tsosie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Keegan Rank	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Phyllis Narajo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Bridget Koza	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Mike Tinsley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
				Jacob Steele	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
				Hope Jackson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
				Alisa Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

## AGENDA TOPIC

<b>I. Welcome &amp; Approval of Minutes</b>		<b>CHAIR: CAROL VERDOIA</b>
<p>Carol Verdoia welcomed Rupert Steele, Chairman of the Confederated Tribes of the Goshute Reservation, members of the Tribes' Council and Business Committee, as well as tribal attorney Paul Tsosie. Alisa Lee, DCFS Indian Child Welfare Program Administrator, was also in attendance. Committee members introduced themselves in consideration of the many guests present.</p> <p>Ms. Verdoia called for approval of the minutes of February 1, 2019.</p>		
Motion: To approve the minutes of February 1, 2019.	By: Mikelle Ostler	Second: Judge Lindsley
Approval	<input checked="" type="checkbox"/> Unanimous	<input type="checkbox"/> Vote: In Favor _____ Opposed _____

## AGENDA TOPIC

<b>II. Tribal Participation in Juvenile Court</b>	<b>GROUP DISCUSSION</b>
<p>Alisa Lee thanked the Committee for the opportunity to share the tribal perspective with the committee and encouraged engagement with tribal partners. Chairman Steele and Paul Tsosie lead a discussion on issues important to the tribes when tribal children and families are involved in juvenile court proceedings as follows:</p> <ul style="list-style-type: none"> <li>Chairman Steele expressed that he felt the two most important issues on tribal participation are: (1) making sure tribes are notified from the very start of the case; and (2) recognition</li> </ul>	

that cost is a barrier because tribes have very limited funding.

- Chairman Steele also stressed the importance of keeping the tribe involved because tribal identity, connection, and the kinship relationship are critical for children.
- Mr. Tsosie explained that he has worked for many years in all aspects of tribal law. He wants the Committee to understand that ICWA stems from the Treaty Clause of the United States Constitution, and Indian children are a tribe's most important resource.
- The Goshute tribe is only given \$400 dollars a year from the U.S. government to fund its ICWA program.
- Mr. Tsosie asked the Committee to consider two factors when it comes to possible rules for tribal participation:
  - (1) Make it easier for tribes to participate without legal counsel. When a lawyer is used, consider allowing for *pro hac vice* fees to be waived for ICWA cases. (There are rules or laws in other States that allow for this.) Even when participation is allowed without a lawyer, the process is still difficult because motions and hearings are needed for the tribe to intervene. He suggested that an easier process could be implemented for a tribe to have access and become a party.
  - (2) Consider treating every case where there is a "reason to know" ICWA applies as an ICWA case.
- Ms. Lee explained that DCFS has decided to treat all potential ICWA cases as ICWA cases until they are proven otherwise. This means DCFS should be making informal notifications to tribes from the very start to try to engage communication with the tribe.
- Committee members discussed the meaning of "tribal participation" and who is appropriate to represent the tribe. Is the tribal caseworker appropriate? The answer to the question depends on the tribe. In smaller tribes this may be the chairman or tribal leader, while larger tribes may designate an ICWA worker. Discussion took place on using the BIA list of representatives for tribes as the ICWA point of contact for an authorized tribal representative.
- Mr. Tsosie stressed that the court should recognize that just because the tribe is participating does not mean that the tribe is going to fight for or even side with the tribal member parent. Also, when considering the best interest of the child, Congress has mandated that tribal placement is in the best interest of the child. Tension on this issue most often occurs when there is discussion on whether or not to move a child from a non-ICWA placement.
- Discussion took place on the bill currently before the Utah legislature that would open up more placement options in ICWA cases because it allows for placement in homes where cohabitation is occurring.
- Court bailiffs/deputies should receive training on the right of tribal members to be present in the courtroom during child welfare proceedings unless the judge closes the hearing.

Carol Verdoia thanked the guests from the Confederated Tribes of the Goshute Reservation, Ms. Lee and Mr. Tsosie for traveling to the meeting and providing input.

Action Item:

Possible issues for discussion at a future meeting included:

1. Not requiring an attorney for a tribe due to cost and availability when a child is clearly an enrolled member.
2. Considering what other states do regarding waiving *pro hac vice* requirements.
3. Allowing tribal participation by a member without an attorney.
4. Whether an enrolled member should automatically be treated as a party.



