Utah Rules of Juvenile Procedure Committee- Meeting Minutes

March 1, 2019		Noon to 2:00 p.m.	Education Room
MEETING DA	ATE	TIME	LOCATION
MEMBERS:	Present Absent Excus	ed MEMBERS:	Present Absent Excused
Carol Verdoia		Daniel Gubler	
Judge Elizabeth Lindsley		Sophia Moore	
Judge Mary Manley (by phone)		Mikelle Ostler	
Arek Butler		Jordan Putnam	
Trish Cassell (by phone)		Chris Yannelli	
Monica Diaz			
Kristin Fadel			
David Fureigh			
AOC STAFF:	Present Excused	GUESTS:	Present Absent
Katie Gregory		Chairman Rupert Steele	
Jean Pierce		Paul Tsosie	
Keegan Rank		Phyllis Narajo	
Bridget Koza		Mike Tinsley	
		Jacob Steele	
		Hope Jackson	
		Alisa Lee	

AGENDA TOPIC

I. Welcome & Approval of Minutes		CHAIR: CAROL VERDOIA		
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. Ms. Verdoia called for approval of the minutes of February 1, 2019.				
Motion: To approve the minutes of February 1, 2019.	By: Mikelle Ostler	Second: Judge Lindsley		
Approval	□ Unanimous □	Vote: In Favor Opposed		

AGENDA TOPIC

AGENDA 10116	
II. Tribal Participation in Juvenile Court	GROUP DISCUSSION

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:

• 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

- 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.

Possible issues for discussion at a future meeting included:		
 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.		
Allowing tribal participation by a member without an attorney.		
 Whether an enrolled member should automatically be treated as a party. 		

III. Rule 9	JUDGE LINDSLEY
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Ms. Gregory distributed an email draft of Rule 9 dated March 1, 2019, created by Judge Lindsley to address prior comments submitted by Judge Leavitt. The draft removed the findings made by the court in lines 4-16 and made changes to lines 50-54 by removing some of the wording and adding "another alternative program" as an option for placement of a minor as an alternative to detention. On lines 50 and 51 of the draft of March 1, 2019, the committee struck the phrases "reasonable cause exists for continued detention" and "order continued detention" and on lines 52 and 53 added the phrases "a less restrictive alternative to detention is appropriate" and "another alternative program." The revisions clarify that the findings made at a determination to hold a minor in detention are not also required if the determination is to release the minor instead.

Judge Lindsley made a motion to approve the suggested revisions to Rule 9 contained at lines 50-53 and the renumbering of subsequent paragraphs that follow on lines 55 through 69. Sophia Moore seconded the motion and it passed unanimously.

Judge Lindsley discussed a second issue pertaining to the standard for taking a minor into custody and booking into a detention center. She reported on legal research completed by the juvenile court law clerk concluding that while the adult standard is probable cause, the standard for juveniles is the lesser standard of reasonable grounds. Ms. Moore and Ms. Diaz advocated for a rule change that would allow juveniles to have a probable cause determination made within 24 to 48 hours. Members discussed differences in statute between adult criminal law and juvenile law and whether these could be resolved by rule or should be addressed by the Legislature or by the courts through appeal.

The Committee decided to move forward on the latest revisions to Rule 9 and request that the Supreme Court allow the revisions to be sent out for public comment. The additional issues related to a probable cause standard and the 48 hour time period will be placed on a future agenda for additional discussion.

Action Item:	Present the current Rule 9 revisions to the Supreme Court for public comment.				
Motion: to approve proposed revisions to March 1, 2019 draft of Rule 9 contained at lines 50-53 and the renumbering of subsequent paragraphs that follow on lines 55-69.	Ву: Ј	udge Lindsl	ey	Secon	d: Sophia Moore
Approval	× Unai	nimous	□ Vote: # In Fay	vor	# Opposed

AGENDA TOPIC

IV. Old or New Business ALL

Rule 58-Victim Rights. Katie Gregory emailed to members an updated version of Rule 58 for today's meeting. She reported that staff to the Rules of Civil Procedure Committee discussed proposed changes to Juvenile Rule 58 and Civil Rule 58B with the Supreme Court on February 27th. The Supreme Court asked that the URJP Committee make a change to Rule 58 to read on lines 7-8 "the juvenile court will file an abstract of judgment in district court." rather than the

original language which stated "the juvenile court will abstract the judgment to the district court." Additional changes were also made in Civil Rule 58B and these have been approved by the Civil Rules Committee. Judge Lindsley made a motion to approve the additional changes to Rule 58. Chris Yannelli seconded the motion and it passed unanimously. **April Meeting:** The Committee agreed to cancel the meeting previously set for April 5, 2019 due to conflicts for some of the members. Agenda for May Meeting: The issue of tribal participation will be placed on the agenda for the May meeting to determine if members want to propose a rule. Bridget Koza offered to research what other states are doing in the area of allowing tribal representatives to participate and rules pertaining to pro hac vice appearances. Members will reach out to their respective constituencies regarding whether tribes are allowed to participate in courtrooms around the state and then report back at the May meeting. Katie Gregory will send out a calendar cancellation of the meeting Action Item: set for April 5, 2019. By: Judge Lindsley Second: Chris Yannelli Motion: To approve revisions to Rule 58 as requested by the Supreme Court as described above. Approval × Unanimous ☐ Vote:

In Favor

Opposed