

Utah Rules of Juvenile Procedure Committee- Meeting Minutes

October 12, 2018

Noon to 2:00 p.m.

Education Room

MEETING DATE

TIME

LOCATION

MEMBERS:	Present	Absent	Excused	MEMBERS:	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	<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	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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"/>
AOC STAFF:	Present	Excused		GUESTS:	Present	Absent	
Katie Gregory	<input checked="" type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	
Jean Pierce	<input checked="" type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	
Keegan Rank	<input checked="" type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	

AGENDA TOPIC

I. Welcome, Approval of Minutes & Professional Disclosures		CHAIR: CAROL VERDOIA
<p>Carol Verdoia welcomed the following new members to the committee: Arek Butler, Monica Diaz, Daniel Gubler and Jordan Putnam. Committee members made professional practice disclosures as required by Rule 11-101(4) of the Supreme Court Rules of Professional Practice. Carol Verdoia called for approval of the minutes of June 1, 2018.</p>		
Motion: To approve the minutes of June 1, 2018.	By: Mikelle Ostler	Second: Judge Lindsley
Approval	<input checked="" type="checkbox"/> Unanimous	<input type="checkbox"/> Vote: In Favor _____ Opposed _____

AGENDA TOPIC

II. Rule 9-Detention hearings; scheduling; hearing procedure.	JUDGE LINDSLEY
<p>Following the June meeting, revisions to Rule 9 were sent out for public comment. Judge Lindsley received an informal comment from a juvenile judge, so Rule 9 was placed back on the Committee's agenda. Revisions to Rule 9 were made to adopt language added in H.B. 239 by adding lines 26-35 on the draft of December 1, 2017. The comment inquired whether it was the Committee's intention that the juvenile court consider the conditions in lines 26-46 in addition to the conditions listed in Rule 9(a)(1) through (a)(9) when determining whether to keep a juvenile in detention. After discussion, Judge Lindsley made a motion to strike line 4 beginning at "At a detention hearing" through line 17. Sophia Moore seconded the motion and the motion passed unanimously. Members agreed that the remaining additions in lines 18-68, which were previously sent out for comment, should remain in the proposed rule. The Committee recommended addressing Rule 9 with the Supreme Court and requesting that it be sent out for a second comment period.</p>	

Sophia Moore asked the Committee to revisit whether the exclusion of weekends and holidays in the 48 hour computation of time for holding a detention hearing is unconstitutional. Committee members acknowledged that the issue was previously addressed and that research performed by one of the juvenile court law clerks indicated that the weekend and holiday exclusion in the *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991) did not apply to juvenile cases. Ms. Moore asked the Committee to review information she obtained at a national conference and place the item on the agenda for December for further discussion.

Action Item:	Katie Gregory will distributed a copy of County of Riverside v. McLaughlin along with any additional materials provided by Sophia Moore pertaining to the issue of the constitutionality of holding youth in detention for more than 48 hours when weekends or holidays intervene. Rule 9 will be returned to the agenda on December 7 for additional discussion.	
Motion: to revise the draft of December 1, 2017 by deleting line 4 beginning with the sentence "At a detention hearing" through line 17.	By: Judge Lindsley	Second: Sophia Moore
Approval	<input checked="" type="checkbox"/> Unanimous	<input type="checkbox"/> Vote: In Favor _____ Opposed _____

AGENDA TOPIC

III. Rule 5-Definitions	CAROL VERDOIA
<p>Revisions to Rule 5 were previously sent out for public comment. A comment was received which indicated that the definition of ungovernability in the Rule was out of sync with the jurisdictional definition in 78A-6-103(3) requiring that the condition persist despite earnest and persistent efforts. Judge Lindsley explained that the issue had been discussed prior to sending the rule out for comment. The Committee purposely left out the judicial finding because these findings are already contained in Rule 32(c). If jurisdictional criteria is added to the definition of ungovernability in Rule 5, then jurisdictional criteria would need to be added to all other definitions. After discussion, the Committee decided not to change the rule as proposed.</p>	
Action Item:	Rule 5 as previously amended will be taken to the Supreme Court for further action.

AGENDA TOPIC

IV. Letter from Supreme Court Regarding New Initiatives on Pro Se Parties and Advisory Committee Notes	CAROL VERDOIA
<p>The Utah Supreme Court sent a letter to its Advisory Committees encouraging the committees to draft rules in a manner that is simple and easily understood by <i>pro se</i> parties. Members agreed to keep <i>pro se</i> parties in mind when drafting and revising juvenile rules.</p> <p>The letter also asks members to review all Advisory Committee Notes associated with rules for the following: 1) accuracy with existing case law, 2) whether the rule itself can be clarified if the note was added to explain the intent of the rule, and 3) to ascertain the general purpose of the note such as providing historical context or an example of the rule's application. The Rules of Juvenile Procedure contain 11 Advisory Committee Notes. The Committee agreed to place these</p>	

AGENDA TOPIC

VI. Rule 58-Victim Rights	KATIE GREGORY
<p>Katie Gregory explained that a prosecutor raised a concern about the length of time that prosecutors have to file for restitution in juvenile cases and is asserting that pursuant to Rule 58, the prosecutor is entitled to up to one year to file for restitution. However, recent legislative changes in H.B. 239 changed the timeline for juvenile restitution filings to within three months of disposition in 78A-6-117(h)(viii). The prosecutor relies on 77-38a-302(5)(d)(i), which states that the prosecuting agency shall submit requests for restitution within one year after sentencing. Rule 58 states that the court shall honor the rights and procedures accorded to victims pursuant to Title 77, Chapters 37 and 38. While Rule 58 does not specifically mention Chapter 38a, another section of Chapter 38, 77-38-3(3)(b), includes a cross reference to the applicable paragraph in Chapter 38a. Section 77-38-3(3)(b) cites to the one year requirement for submitting restitution requests contained in Section 77-38a-302(5)(d). Another concern is that if a prosecutor waits too long to contact a victim, juvenile court jurisdiction may be terminated.</p> <p>The Committee felt that it cannot resolve by rule the conflict between the two statutes and that it is better addressed and resolved by a legislative solution.</p>	
Action Item:	Katie Gregory will inform Dawn Marie Rubio and legislative counsel of the results of the Committee's discussion.

AGENDA TOPIC

VII. Old or New Business/Future Meeting Dates	ALL
<p>The Committee considered items for the November 2nd agenda including items pertaining to review of Advisory Committee Notes and consideration of tribal participation in juvenile court hearings. Katie Gregory will distribute the lengthy research memorandum on tribal participation in other states for review by new members. The Committee will then have a discussion regarding whether a formal rule is necessary. Alan Sevison was considering the issue before he left the Committee and will be invited to the November meeting.</p> <p>Carol Verdoia also noted that a Task Force is being formed to consider whether a state ICWA law is needed in light of the recent decision in <i>Texas v. Zinke</i>. The Rule 9 issues pertaining to whether the exclusion of weekends and holidays in computing the time a youth is held in detention prior to hearing is unconstitutional will be addressed at the December 7, 2018 meeting.</p> <p>Members agreed to schedule meetings from Noon to 2:00 p.m. on the first Friday of each month from January to June, 2019. The meetings were set on the following dates: January 4, February 1, March 1, April 5, May 3, and June 7, 2019.</p>	
Action Item:	Katie Gregory will send out the ICWA memorandum to all members by email.