Utah Rules of Juvenile Procedure Committee- Meeting Minutes

October 12	2, 2018 Noo	n to 2:00 p.m.	Education Room
MEETING D	ATE TIM	E	LOCATION
MEMBERS:	Present Absent Excused	MEMBERS:	Present Absent Excused
Carol Verdoia		Daniel Gubler	
Judge Elizabeth Lindsley		Sophia Moore	
Judge Mary Manley		Mikelle Ostler	
Arek Butler		Jordan Putnam	
Trish Cassell		Chris Yannelli	
Monica Diaz			
Kristin Fadel			
David Fureigh			
AOC STAFF:	Present Excused	GUESTS:	Present Absent
Katie Gregory			
Jean Pierce			
Keegan Rank			

AGENDA TOPIC

I. Welcome, Approval Professional Disclosu		CHAIR: CAROL VERDOIA
Daniel Gubler and Jord required by Rule 11-10	dan Putnam. Committee n	bers to the committee: Arek Butler, Monica Diaz, nembers made professional practice disclosures as rt Rules of Professional Practice. Carol Verdoia 18.
Motion: To approve the minutes of June 1, 2018.	By: Mikelle Ostler	Second: Judge Lindsley
Approval	Unanimous] Vote: In Favor Opposed

AGENDA TOPIC

II. Rule 9-Detention hearings; scheduling;	JUDGE LINDSLEY
hearing procedure.	

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.

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:	McLaughlin along with Moore pertaining to th youth in detention for	tributed a copy of Count in any additional materia ine issue of the constitut in more than 48 hours wh ule 9 will be returned to ional discussion.	Ís provided by Sophia ionality of holding nen weekends or
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: S	Sophia Moore
Approval	🛛 Unanimous	Vote: In Favor	_ Opposed

AGENDA TOPIC

III. Rule 5-Definitions	CAROL VERDIOA
Revisions to Rule 5 were previously sent out for p	bublic 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 cond	lition persist despite earnest and persistent
efforts. Judge Lindsley explained that the issue h	ad 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 crite	ria would need to be added to all other
definitions. After discussion, the Committee decide	ded not to change the rule as proposed.
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Action Item:	Rule 5 as previously amended will be taken to the Supreme Court
	for further action.

AGENDA TOPIC

from Supreme Court Regarding New on Pro Se Parties and Advisory e Notes	CAROL VERDOIA
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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 *pro se* parties. Members agreed to keep *pro se* parties in mind when drafting and revising juvenile rules.

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

on the November agenda for follow up.

Action Item:	Katie Gregory will send Committee members a list of Rules that contain Advisory Committee Notes.

AGENDA TOPIC

V. Rule 27A-Admissibility of statements given	JUDGE LINDSLEY
by minors	

Judge Lindsley explained that earlier revisions were made to Rule 27A to clarify when parents need to be present if a child/minor is going to waive his or her Miranda rights. A distinction is made in the rule regarding whether or not the child is less than 14 years of age, with children under 14 requiring the presence of the parent. A footnote in a recent Utah Supreme Court case indicated that the language of Rule 27A may unconstitutionally shift the burden to the juvenile that they did not knowingly and voluntarily waive their rights. To clarify the language of the Rule, Judge Lindsley proposed striking ""is presumed capable of knowingly and voluntarily waive their " so that section (a)(2) reads "If a minor is 14 years of age or older, the minor may waive their rights without having a parent, guardian, or legal custodian present during questioning." This would remove the presumption while still allowing motions to suppress to be filed.

In addition, Judge Lindsley proposed revisions to paragraph (b) so that lines 13-15 would read "The presumption outlined in paragraph (a)(1) may be overcome by a preponderance of the evidence showing the ability of a minor to comprehend and waive the minor's rights." This removes the reference to a presumption in paragraph (a)(2) regarding children 14 years of age or older.

Judge Lindsley explained that the age 14 guideline comes from common law, other statutes with age requirements, and the age at which a juvenile may be tried as an adult. Ms. Moore and Ms. Diaz expressed concern with the age requirement. The committee discussed the pros and cons of eliminating Rule 27A in its entirety. David Fureigh proposed eliminating paragraph (a)(2) by striking lines 10 through 12 and leaving paragraph (a)(1) as guidance for children under 14 years of age. Judge Lindsley moved to amend Rule 27A by striking lines 10, 11 and 12 in the draft dated October 12, 2018 and to retain the proposed changes in lines 13 and 14. Judge Manley seconded the motion. After further discussion the vote was six in favor and four opposed with Ms. Diaz, Ms. Moore, Mr. Putnam and Mr. Butler voting against the motion. The Committee discussed the impact of the rule on pro se individuals and determined that the rule did not need additional clarification.

Action Item:	Rule 27A as amended will be sent to the Supreme Court for consideration of whether the rule is ready to be sent out for public comment.	
Motion: to strike lines 10- 12 of the October 12, 2018 draft and maintain the revisions in lines 13 and 14.	By: Judge Lindsley	Second: Judge Manley
Approval	□ Unanimous × Vote: # In	n Favor 6 # Opposed 4

AGENDA TOPIC	
VI. Rule 58-Victim Rights	KATIE GREGORY

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.

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.

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
The Committee considered items for the November 2 nd 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.	
Carol Verdoia also noted that a Task Force is bein is needed in light of the recent decision in <i>Texas</i>	5

Carol Verdola 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 *Texas v. Zinke*. 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.

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.

Katie Gregory will send out the ICWA memorandum to all members
by email.