

Utah Rules of Juvenile Procedure Committee- Meeting Minutes

October 27, 2017

Noon to 2:00 p.m.

Executive Dining Room

MEETING DATE

TIME

LOCATION

MEMBERS:				MEMBERS:			
Present	Absent	Excused		Present	Absent	Excused	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Carol Verdoia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mikelle Ostler
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Judge Elizabeth Lindsley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Alan Sevison
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Judge Mary Manley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Pam Vickrey
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Kristin Fadel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Chris Yannelli
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	David Fureigh	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Sophia Moore
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Brent Hall	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Debra Jensen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Trish Cassell (by phone)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
AOC STAFF:				GUESTS:			
Present	Excused			Present	Absent		
<input checked="" type="checkbox"/>	<input type="checkbox"/>		Katie Gregory	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Patricia Owen, Office of Legislative Research and General Counsel
<input checked="" type="checkbox"/>	<input type="checkbox"/>		Adrienne Nash	<input type="checkbox"/>	<input type="checkbox"/>		
<input checked="" type="checkbox"/>	<input type="checkbox"/>		Briana Allen	<input type="checkbox"/>	<input type="checkbox"/>		

AGENDA TOPIC

I. Welcome & Approval of Minutes		CHAIR: CAROL VERDOIA
Corrections to the Minutes: None		
Motion: To approve the minutes of September 22, 2017.	By: Pam Vickrey	Second: Mikelle Ostler
Approval	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Vote: In Favor _____ Opposed _____	

AGENDA TOPIC

II. Continued Review of Rules Impacted by HB 239	JUDGE LINDSLEY, PAM VICKREY AND CHRIS YANNELLI
Judge Lindsley, Pam Vickrey and Chris Yannelli reviewed a group of rules impacted by HB 239. These included Rules 7, 7A, 21, 22, 23, 23A, 33, 39 and 45. Judge Lindsley reported that Rules 9 and 11 will be discussed at the next meeting.	
<p>Rule 7-Warrants. Judge Lindsley proposed additions to conform to statute. At line 4 she added the statutory reference to 78A-6-106.5, which was added by HB 239. At line 26 she added the ability to order that a minor be returned home, taken to the court or other nonsecure facility. After discussion, Judge Lindsley made a motion to approve the revisions to Rule 7 in the draft dated October 24, 2017. Mikelle Ostler seconded the motion and it passed unanimously.</p>	
<p>Rule 23A-Hearing on conditions of Sections 78A-6-702; bind over to district court. Judge Lindsley proposed a change to line 23, which was missed when reviewing the rule after legislation was passed in 2015. To conform to statute, it is necessary to change the burden of proof from clear and convincing to a preponderance. The revision is unrelated to HB 239. Judge</p>	

Lindsley made a motion to approve the change of the burden of proof to preponderance in Rule 23A, at line 23. Pam Vickrey seconded the motion and it passed unanimously.

Rule 33-Preliminary orders and summary proceedings.

Judge Lindsley proposed deleting lines 15 through 33 of Rule 33 regarding non-resident runaway cases. After the passage of H.B. 239, there is no longer statutory authority to place a youth in DCFS custody except in abuse, neglect or dependency situations. Deletion paragraph (b) also requires the re-lettering of paragraph (c) to (b) and (d) to (c). Judge Lindsley made a motion to approve Rule 33 with the deletion of section (b) and the re-lettering of paragraph (c) to (b) and paragraph (d) to (c). Mikelle Ostler seconded the motion and it passed unanimously.

Motion #1: Motion to approve the revisions to Rule 7 in the draft dated October 24, 2017.	By: Judge Lindsley	Second: Mikelle Ostler
Approval	<input checked="" type="checkbox"/> Unanimous	<input type="checkbox"/> Vote: In Favor _____ Opposed _____
Motion #2: Motion to approve the change of the burden of proof to preponderance in Rule 23A, at line 23.	By: Judge Lindsley	Second: Pam Vickrey
Approval	<input checked="" type="checkbox"/> Unanimous	<input type="checkbox"/> Vote: In Favor _____ Opposed _____
Motion #3: Motion to approve Rule 33 with the deletion of section (b) and the re-lettering of paragraph (c) to (b) and paragraph (d) to (c).	By: Judge Lindsley	Second: Mikelle Ostler
Approval	<input checked="" type="checkbox"/> Unanimous	<input type="checkbox"/> Vote: In Favor _____ Opposed _____

AGENDA TOPIC

III. Review of Rules 7A, 21,22,23,39,45	JUDGE LINDSLEY
<p>Judge Lindsley reported that after reviewing Rules 7A, 21, 22, 23, 39, 45, no revisions are required by H. B. 239. A discussion followed regarding Rule 7A and the appropriate use of pick up orders. Rule 7A Pick Up Orders are only provided after hours or in exigent circumstances such as when computers are not working during a business day. The verbal warrant is a verbal order that lasts until the next business day. If paperwork for a warrant is not submitted on the next business day, the verbal order expires. Judge Lindsley will look into Rule 7A further and report back at the next meeting regarding statutory authority to issue verbal warrants and whether Rule 7A should be retitled "Verbal Warrants."</p> <p>Rule 39 addresses contempt of court and requires that a motion or written request be filed alleging contempt. It does not provide for verbal requests for contempt. The committee determined that Rule 39 is not impacted by H. B. 239.</p> <p>Brent Hall noted that Rule 39 requires an "affidavit" while section 78B-5-705 refers to the filing of a "declaration," but does not mention the juvenile rules. The statute only refers to Civil Rules, Criminal Rules and Rules of Evidence. Brent Hall discussed whether Rule 39 should read "be accompanied by an affidavit or <u>unsworn declaration</u>...." However, without authority in the statute, this cannot be accomplished by juvenile rule and a statutory change may first be required.</p>	

Briana Allen and Judge Lindsley will follow up and get more information from Brent Johnson regarding whether unsworn declarations may be used in juvenile court. If it is a procedural rule, it may not require a change to statute to allow declaration. The committee agreed to place Rule 39 back on the next agenda after more information is gathered.

Action Item:

- 1) Rule 7A will be tabled for further discussion at the next meeting. Judge Lindsley will research the statutory authority to issue verbal warrants.
- 2) Briana Allen and Judge Lindsley will obtain more information from Brent Johnson on the use of unsworn declarations in juvenile court.
- 3) Rules 7A, 9 and 11 will be placed on the next agenda.
- 4) Judge Lindsley will work with Krista Airam to place Rule 3-Style of Pleadings on the agenda for the next meeting. (Place Rule 3 on agenda as a separate item after the rules above.)
- 5) Judge Lindsley, Pam Vickrey and Chris Yannelli will look at Rule 8 for the January 5, 2018 meeting.

AGENDA TOPIC

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

CAROL VERDOIA

Pam Vickrey received a request from attorney Rob Latham to present revisions to Rule 53 to the committee. He proposes amending Rule 53 to allow an attorney to withdraw in open court if the attorney's client is present. Withdrawal would not be appropriate in child welfare cases due to the requirement that counsel file appeals and this would need to be carved out as an exception. The committee agreed to place the matter on the next agenda after obtaining more information from Rob Latham.

Action Item:

Pam Vickrey will follow up with Rob Latham to obtain more details on his request.

AGENDA TOPIC

V. Old or New Business

ALL

Carol Verdoia announced that the Utah Supreme Court appointed Sophia Moore to replace Maybell Romero on the committee. Ms. Moore will join the committee at its next meeting.

Katie Gregory announced that Rules 19 through 19C have been sent to the publisher and will go into effect on November 1, 2017. Rules 14, 17, 34 and 48 are out for comment until November 27 and will be ready to place on the December 1, 2017 agenda. Rules 7, 15, 16, 23A, 31 and 33 will be sent to the Supreme Court at its next meeting with a request for permission to send them out for comment.